

California Environmental Protection Agency

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

~o0o~

Strategic Policy Development Committee

Joe Serna Jr., CalePA Building
1001 I Street, Coastal Hearing Room
Sacramento, CA 95814

Monday, May 12, 2009

10:00 a.m.

Reported by: Nancy Palmer
Certified Electronic Reporter/Transcriber
Certification Number: CERT**00121

MEMBERS PRESENT

Margo Reid Brown, Chair
 Sheila Kuehl, Member
 John Laird, Member
 Carole Migden, Member (morning session)
 Rosalie Mulé, Member

ALSO PRESENT

Block, Elliot, Legal Staff
 Chan, Grace, Los Angeles County Sanitation Districts
 Danzinger, Jeff
 Edgar, Evan
 French, Sally
 Gage, Tim, Pacific Waste Consulting Group
 Leary, Mark, Emcee
 Levenson, Howard.
 Nuffer, John
 Orr, Bill - p.m. session, main speaker
 Oster, Rachel, Recology, formerly Norcal Waste Systems
 Packard, Rubia
 Rauh, Ted, Program Director
 Richard, Jennifer, Office of Sheila Kuehl
 Smyth, Brenda
 Williams, Clark

OTHERS PRESENT

Acosta, Glenn, Municipal Water District, Orange County
 Cupps, John, John A. Cupps Associates
 Helget, Chuck, Allied Waste Services
 Stoddard, Kent - Waste Management of San Diego
 Sweetser, Jr., Larry D., Sweetser & Associates, Regional
 Council of Rural Counties

I N D E X

	Page
Proceedings	1
Opening Remarks, Roll Call and Declaration of Quorum	
Chair Brown	1
Agenda Items	
Item B. Update on Implementation Of 2009 Strategic Directives	2
Item C. Discussion And Status Report On The Recycling And Waste Management Measures Included In The Climate Change Scoping Plan Prepared Pursuant To AB 32	8
Item D. Consideration Of The Adoption Of The Biennial Update Of The Five-Year Plan For The Waste Tire Recycling Management Program (5 th Edition Covering FYs 2009/10-2013/14 (Tire Recycling Management Fund)	58
Item E. Discussion Of Information Related To Staff And Stakeholder Analysis Of Issues Regarding Long-Term Postclosure Maintenance, Corrective Action And Financial Assurances At Landfills	76
Adjournment	156
Certificate of Reporter	157

1 P R O C E E D I N G S

2 May 12, 2009

10:00 a.m.

3 Chair Brown - Welcome to the May 12th meeting of
4 the Strategic Policy Committee of the California Integrated
5 Waste Management Board. There are agendas for our meeting
6 today on the back table. If anyone would like to speak to
7 any of the items, please fill out a speaker form and bring
8 it to Kristin. I would like to remind everybody in the
9 audience to please change or move your cell phone to the
10 vibrate mode and papers, as well. Kristin, could you call
11 the roll?

12 **Roll Call and Declaration of Quorum**

13 Kristin - Kuehl - Here; Laird - Here; Migden -
14 Here; Mulé - Here; Brown - Here.

15 Chair Brown - Any ex parte to report? Okay, and
16 then I do want to mention the flow of the agenda today, we
17 are going to try to get through this as efficiently as
18 possible. We will hear Committee Items B, C and D and then,
19 whatever time we conclude with Item D, we will take a half
20 hour break, and we are going to reset the room to do it in a
21 different format. So whether it is coffee and a donut, or
22 it is lunch, it is whatever the 30 minutes is, and then we
23 will immediately reconvene and start with Item 12. So just
24 for planning purposes. Do we have any Director's Reports
25 today? Or can we delve right into Item B? And I think that

1 is Rubia.

2 **Item B. Update on Implementation Of 2009 Strategic**
3 **Directives**

4 Ms. Packard - Good morning, Madam Chair and Board
5 Members. Rubia Packard, Chief Deputy Director. I am here
6 today to present Agenda Item B, which is Board Item 9,
7 Update on Implementation of the 2009 Strategic Directives.

8 The progress report that we have provided you on
9 this Agenda Item describes the progress made by staff in the
10 first four months of the year since January when you first
11 put forth some of the Updated Directives for us. This is
12 the first in a series of three reports on Implementation of
13 the Strategic Directives. We will be reporting to you again
14 in September on all of the items that we feel are current at
15 that time, progress since May; and then we will also be
16 providing you a third report in January of 2010, which is
17 our year-long review as part of our overall accomplishments,
18 so there will be a more detailed review at that time, as
19 well.

20 Since we are only four and a half months into the
21 year, this report is not a comprehensive listing of all the
22 activities undertaken by staff to achieve the 12 Directives
23 and the 44 Sub-Directives in the 2009 Strategic Directives.
24 The Agenda item focused on those areas where significant
25 progress has been made, and we provided you highlights, and

1 only for what we felt were key activities. We are certainly
2 able to provide you additional detail at any point if you
3 want, if you have questions, etc.

4 Rather than read to you from the Agenda item,
5 since all the information is in there, and I know you love
6 that, but I will not do it, I would just like to say that we
7 believe this type of accountability to the Board relative to
8 our activities is very important, and we are very proud of
9 the work that staff has done on these Directives.

10 There are several areas where notable progress has
11 been made, but rather than pick out some and not others, I
12 will just say that, while all of Executive Staff is here,
13 and some of their staff, if you have any questions about any
14 particular items that we can answer for you today. The last
15 thing is Agenda Item C, which is Board Item 10 on today's
16 Agenda, which is following this one, is going to be a
17 comprehensive Status Report on our Climate Change
18 Activities, and the purpose of that is both to update you on
19 where we are, and also as background for a June Agenda item,
20 the Board had expressed the desire to work on a Strategic
21 Directive relative to climate change, so we have provided a
22 more comprehensive report today on those activities, in
23 preparation for that discussion next month. So with that,
24 if you have any questions about individual ones, I will not
25 go through them since I know you all can read.

1 Chair Brown - Thank you, Rubia.

2 Ms. Packard - Thank you.

3 Chair Brown - Excellent, and I might add this does
4 not always include all of our statutory obligations. You
5 know, in the development of our Strategic Directives, we
6 recognize that it would be cumbersome to try and line out
7 every single thing, so I just want to applaud you for making
8 the progress we have while continuing our statutory
9 obligations. Carol?

10 Ms. Migden - Yeah. You know, we had talked about
11 in the retreat having you and I doing something about
12 plastic packaging, and moreover, issues looking at the name
13 change, clarifying squabbles with the Regulatory Agencies.
14 You know, I am struck with some things I would want to see.
15 And then, if it did not come the first quarter -- because we
16 had established some new add-on strategic directives, and I
17 do not see them in here.

18 Chair Brown - Well, those -- what you are
19 referring to is part of the Board work plan, which is our
20 work, separate and apart from the work that the staff does
21 in response to our Strategic Directives. So this is a
22 progress report on the directives that the Board adopted.
23 You and I need to get together to put together a plan and a
24 directive that the Board can discuss in Policy Committee on
25 the development of a specific directive for performance

1 measures on plastics and things we want to do.

2 Ms. Migden - And, separately, legislation, I
3 believe.

4 Chair Brown - Exactly, yes.

5 Ms. Packard - Madam Chair, Member Migden is right,
6 though. Not all of the directives are in this report. What
7 we did was we went through all 56 directives and picked out
8 the activities where we felt we were at a point where we
9 could report some progress, so they are not all addressed in
10 here.

11 Chair Brown - Right.

12 MS. Packard - So you are right, there are
13 directives that are not in here.

14 Ms. Migden - But I would rather see something that
15 says this is intended to and it will be, so it is not lost
16 in the mainstream. In other words, you have picked some,
17 there is no presentation of the whole. So I am saying back
18 that there were a few very new things that I would hope we
19 are beginning to do, and the baby steps are taken, and I
20 remember about six or 10 --

21 Ms. Packard - Yes, absolutely.

22 Ms. Migden - -- that were of substantial
23 importance. So what I am trying to say is I would want you
24 to nudge us, then, because if they are sort of the ongoing,
25 but not including things about, you know, I am just struck

1 with. We have an initiative in a week that will not pass
2 all kind of financing. I want to look at commercial
3 recycling -- what are we doing about that? Or anaerobic
4 digestion. So some of it is not, Madam Chair, exactly, but
5 I also want to structure what it is, then, we are beginning
6 to do of those directives. And if they are not in there,
7 big major ones -- and I will say this to Mark and others --
8 then I want to say, on these others, come June, that is
9 done, here are the 12 things we did not get to, they are
10 very important, here is when we will.

11 Chair Brown - I think that is an excellent point
12 and I think that is where we have an opportunity to shape
13 what this Policy Committee Agenda looks like, where we can
14 look at the issues of responding to economic situations and
15 how it is being affected by commercial recycling, what we
16 want to do on plastics, and that is what we intend to do at
17 this meeting.

18 Ms. Migden - Good.

19 Chair Brown - So if we can work together to plan
20 the upcoming Agendas for this meeting, I welcome that from
21 all the Board Members.

22 MS. Migden - I think that is fine.

23 Chair Brown - I think there was a confusion in
24 your early presentation and maybe the question you and
25 between the three of us. Carole was asking about some of

1 the issues that we talked about, that were new initiatives,
2 but you answered the question of this is not comprehensive
3 of all of our directives, which are two separate issues. So
4 I think we need to just delineate the two and recognize
5 that, maybe in September when we do the update on more or
6 the rest, we make a full presentation on the directives --

7 Ms. Migden - Yes. I just want to know what is on
8 deck and where are we, and if it is twice a year, and it
9 does not come up now, and it is not alluded to, we do not
10 want to get lost in another half year.

11 Chair Brown - Right. We do not want to forget
12 what we have done or what we need to do.

13 Ms. Migden - Right, and especially things that
14 have to do with some maybe drastic actions to help solve
15 some economic situations.

16 Chair Brown - That is true.

17 Ms. Migden - Thank you.

18 Chair Brown - Thank you very much for putting that
19 together, staff. I think we have some direction --

20 Mr. Laird - Madam Chair?

21 Chair Brown - John?

22 Mr. Laird - No, I just have a comment. And the
23 comment is, because I think these are very good and -- there
24 has just been concern that has been over-expressed in the
25 public realm about the role of the Board and I think the

1 bottom line issue is, is that there were an independent
2 oversight, an independent direction, and the nudging
3 actually coming from this direction and not from the staff,
4 so much would not have been done. And there is no clear
5 example of that than the Strategic Directives because it
6 really shows what an independent Board doing oversight and
7 setting goals actually gets in terms of results. This is a
8 very clear thing. And I think it would be very hard for
9 some people to say that the Board just meets once a month
10 and does not do anything if they actually took the time to
11 read these and understand them. So I just think the point
12 needed to be noted.

13 Chair Brown - Excellent point. Thank you. Can we
14 quote you in the Sacramento Bee? I think we should move to
15 Item 10, which I think is Howard to begin with.

16 **Item C. Discussion And Status Report On The Recycling And**
17 **Waste Management Measures Included In The Climate Change**
18 **Scoping Plan Prepared Pursuant To AB 32**

19 Mr. Levenson - Thank you, Madam Chair. And good
20 morning, Board Members. Just for the record, I am Howard
21 Levenson with the Sustainability Program. This is a
22 primary, a major update to you on all of our activities
23 related to climate change and the various measures that we
24 are responsible for under the AB 32 Scoping Plan. Among
25 other things, you are going to hear more details about our

1 commercial recycling activities, which you just mentioned in
2 the last item.

3 I do want to acknowledge that we have a couple of
4 our colleagues from the Air Board out in the audience,
5 Sharon Anderson and Johnnie Raymond, right there. And if I
6 am missing anybody else out there, I apologize.

7 We are going to go ahead and present a series of
8 slides, a PowerPoint presentation, on all of the activities
9 we have been engaged on relative to climate change. And to
10 do that, I would like to introduce, to my right, Brenda
11 Smyth, who is Division Chief for our Technical and
12 Analytical Resource Division, and Clark Williams, who
13 supervises the Climate Change Section. And they have done a
14 lot of the work over the years on putting forth our efforts
15 relative to AB 32. There are a lot of other people involved
16 at the Waste Board. At the end, we have a slide that
17 acknowledges some of the key staff and I just want to make
18 sure that they all know that I appreciate all their efforts,
19 and it has been a real team job. So let me go ahead and
20 turn it over to Brenda.

21 Ms. Smyth - Great. Good morning, Madam Chair and
22 Board Members. I just want to thank you for the opportunity
23 to bring you up to speed on the status of the Waste Board's
24 efforts on climate change, and a discussion on the AB 32
25 Scoping Plan. And Sharon and Johnnie are available for any

1 specific questions that you have on the Scoping Plan itself.

2 The Global Warming Solutions Act of 2006, or AB
3 32, is a landmark bill that is leading the nation on climate
4 change. AB 32 calls for a comprehensive program of
5 regulatory and market mechanisms to achieve greenhouse gas
6 reduction goals. AB 32 designates the Air Board as the Lead
7 and further directs them to work collaborative with other
8 state agencies to implement the greenhouse gas reductions.
9 AB 32 also sets the 2020 greenhouse gas limits at the 1990
10 levels. The Air Board has determined this 2020 target, or,
11 in other words, the 1990 emission baseline, to be 427
12 Million Metric Tons of CO₂e. The Air Board was required to
13 adopt Mandatory Reporting Rules and a Scoping Plan to
14 achieve the necessary greenhouse gas reductions. The
15 Scoping Plan was adopted this last December. Regulations
16 must be adopted to implement the Scoping Plan by January 1,
17 2011. But there is even more work to be done because AB 32
18 also spells out a long-term target for 2050, and that is the
19 equivalent of 80 percent below the 1990 levels.

20 So what is in the Scoping Plan? It is a mix of
21 strategies that combine market mechanisms, other
22 regulations, voluntary measures, and fees. There are some
23 elements listed on this slide in the Scoping Plan and these
24 include energy and transportation focus, a cap and trade
25 program with our Western Region partners, and also existing

1 law, regulations and targeted fees. The Waste Board is a
2 contributing partner in these climate change efforts as a
3 member of the Climate Action Team. The Waste Board has
4 chaired the Recycling and Waste Management Cap Subgroup, and
5 participated as a member of many other subgroups, Economics,
6 Agricultural, Land Use, Research, Green Building, and the
7 State Government Cap Subgroups.

8 The Waste Board has also been actively engaged
9 with the Air Board staff to identify strategies that are
10 included in the Scoping Plan. And then I am going to turn
11 it over to Clark at this point, so he can walk you through
12 the strategies in the Scoping Plan.

13 Mr. Williams - Thank you, Brenda. I will give a
14 brief update on the Recycling and Waste Management Measures
15 in the Scoping Plan and highlight a couple items we are
16 working on, that are included also in the Appendix of the
17 Scoping Plan document. Let us start with the items in the
18 Appendix. In 2007, the Board awarded funding to the Gas
19 Technology Institute to demonstrate commercial scale
20 production of Liquefied Natural Gas from Landfill Gas at the
21 Altamont Landfill. This project has substantial potential
22 benefits toward reducing Nitrous Oxide emissions, and
23 replacing conventional diesel fuel with a low carbon
24 alternative. The project is moving forward quite well, it
25 is in the final stages of construction, and just starting on

1 production. Waste Compliance Mitigation Program staff,
2 Steffie Young (phonetic) and Scott Walker, are overseeing
3 this project and anticipate making a presentation to the
4 Board after a public kick-off event later this summer.

5 The second item on the slide is a Water-Friendly
6 Landscape Guidelines, those added through our participation
7 on the Land Use Climate Action Team subgroup. These
8 guidelines will be used in support of regional land use
9 greenhouse gas reduction efforts. It can help reduce the
10 generation of green waste, reduce water needs of
11 landscaping, and increase market demand for compost.

12 Mr. Laird - Madam Chair, can I ask a few questions
13 as we go along?

14 Chair Brown - I think it is probably easier.

15 Mr. Laird - I wanted to ask, on the Watershed-
16 Friendly Landscape Guidelines, you just went by quickly on
17 sort of what the subjects were. What are the kinds of
18 things that are within the jurisdiction of the Board, that
19 we might be able to do that actually contribute to this
20 subject?

21 Mr. Williams - Well, perhaps a bit of background
22 on the Watershed-Friendly Guidelines might help. They were
23 originally started by a group of local governments down in
24 the Bay Area to look at Bay-Friendly Landscape Guidelines.
25 Organic Materials Management staff was heavily engaged in

1 that process and was looking and protecting the Bay through
2 management practices that could do things to reduce green
3 waste generation, appropriate plant selection, and increase
4 the demand for compost products. That product was then
5 shared and derivatives have been developed, including a
6 River-Friendly Landscape Guidelines for use in the
7 Sacramento area that is kind of designed to local climatic
8 conditions and issues. And, really, the Board's goal here
9 is a voluntary effort to develop additional guidelines for
10 use in the different climatic regions and areas throughout
11 the state.

12 Mr. Laird - So obviously, if you were with the
13 Water Board, you are concerned about drought tolerant native
14 plants and lowering water use about the kinds of -- there is
15 a mandatory ordinance on landscaped irrigation, those kinds
16 of things from the Water Board; for us, it would be trying
17 to foster the use of compost in a way that meets our other
18 goals and that is sort of the way that we relate to this.

19 Mr. Williams - Member Laird, that is exactly
20 correct. This is a measure actually undertaken and
21 primarily under the auspices of the Department of Water
22 Resources, and they have a major regulatory effort to
23 develop Water-Friendly Guidelines. And we have been working
24 with them to incorporate, to the extent that they have been
25 willing to, references to soil amendments such as compost,

1 as one of the applicable performance activities. And then
2 we will be working with them, once they adopt the measure,
3 to do further outreach on it.

4 Mr. Laird - Okay, thank you. And then, also, you
5 went by the previous page really quickly. And I know that
6 you are doing that because you are going to go subsequently
7 through each one of these individually, but there are a
8 couple of global questions with regard to that page. And it
9 says reductions from these measures are not currently
10 counted toward the AB 32 reduction goal. And my question
11 is, you know, I might know the answer. Why is that?

12 Mr. Williams - Well --

13 Chair Brown - Do you want Sharon or John to answer
14 that question since we do have the ARB here?

15 Mr. Williams - I would certainly welcome their
16 participation if they would like to share their thoughts on
17 this. I would say, you know, right now they are included in
18 what is considered a margin of safety to help ensure that
19 the reduction targets of 2020 are met.

20 Mr. Laird - It is just that we could contribute
21 significant reductions through the things we do, and if the
22 reason that we are not is that is just not in the Scoping
23 Plan, or it is not called out specifically, I think that is
24 an important thing to acknowledge, and that is why I just
25 wanted to have a little exchange about that.

1 Ms. Brown - Do you want to add anything, Sharon?

2 Ms. Anderson - You have already hit it dead on.

3 Sharon Anderson from the Air Resources Board, Office of
4 Climate Change. Initially when we were setting up the
5 different measures, there was some uncertainty as to whether
6 the commercial recycling measure was an energy efficiency
7 measure, where the tons would come from, the tons being in
8 California, within the State of California, or not; so some
9 of our measures, until we work on them a little more and
10 understand them a little bit more as to where the tons --
11 the reduction in the actual greenhouse gas emission
12 reductions occur, that is why there are margin of safety
13 measures, because we are certain they will most likely occur
14 in California, but they could be attributed to other areas
15 in the --

16 Mr. Laird - So if we work with you to clarify that
17 in a way that might be an in-California thing to be
18 measured, that is something that might eventually fall in a
19 different category or at least --

20 Ms. Anderson - You bet.

21 Mr. Laird - Okay. So that is a task for us. And
22 then, also, there were a couple things in here where it said
23 "to be determined," and I know that there are decisions to
24 be made that are really the "to be determined," but, for
25 example, on Extended Producer Responsibility, without

1 presupposing what could be adopted if it -- and I know it
2 has an uphill climb in the Legislature -- if it were to be,
3 is there a range that we might be able to talk about so that
4 people understand that is a major greenhouse gas reducer,
5 and maybe, you know, it might get people to think
6 differently about it, if instead of "to be determined,"
7 there was a range of what might be able to be realized from
8 that?

9 Mr. Levenson - If I could make two comments, one
10 going back to your first conversation with the Air Board, I
11 do want to acknowledge that these measures originally in the
12 draft of the Scoping Plan were actually relegated to the
13 Appendix, and it was because of the interactions of the
14 Board members and staff with the ARB that they were upgraded
15 and promoted, if you will, to the Scoping Plan, even though
16 there is still this issue of exactly how much counts within
17 the --

18 Mr. Laird - What is the premier position? Index
19 and Scoping Plan?

20 Mr. Levenson - With respect to extended produce
21 responsibility, we certainly could put some ranges up, but
22 part of the problem is, it depends on what products are
23 chosen and, of course, as soon as we pick a product, even if
24 it is a hypothetical calculation, then the political
25 reaction will be, "Oh, the Board and Board staff are already

1 predisposed to a certain product being selected under EPR."

2 So we have shied away at this point from doing that, but
3 certainly can follow-up.

4 Mr. Laird - I totally appreciate that. That is
5 why I suggested a range, because a range also indicates that
6 it is an open question, that it is something that is a
7 product-by-product, or category-by-category choice, and it
8 also shows that that decision has not been made. But
9 anyway, you know, I do not want to beat it to death, it is
10 just that it could be helpful in indicating that there is
11 something significant there, rather than just to say "to be
12 determined."

13 Ms. Kuehl - In that vein, then, I had a question
14 about the other TBD, which does seem more determinable in
15 terms of estimate. I mean, I could understand, because the
16 last item is actually two items -- environmentally
17 preferable purchasing and producer responsibility, both of
18 which are, it looks to me, are fairly -- it would be a big
19 guess, really.

20 Chair Brown - Well, does the second TBD refer to
21 the Bagner Study, which we just do not have the exact
22 numbers on the capture efficiency rate of landfills in
23 California? Or is that different? Can you answer a few of
24 those questions?

25 Mr. Williams - There is definitely a relationship

1 of that. I would say one of the other challenges is there
2 is a discrete early action measure within the context of AB
3 32 to minimize landfill methane emissions.

4 Chair Brown - Uh huh.

5 Mr. Williams - And that regulation has not been
6 completed yet. The current status is the Air Board will be
7 hearing that item in June, and then once they hear that item
8 and staff's regulation, then we can kind of look at our
9 Title 27 California Code Regulations and one additional --

10 Ms. Kuehl - So are you saying they are really the
11 same item, that methane control at the landfill is directly
12 attributable to increasing the efficiency of capture?

13 Mr. Williams - Well, it is hard to calculate what
14 additional greenhouse gas reductions will be achieved until
15 that control measure has been finalized.

16 Ms. Brown - But also the discrete early action
17 identified specifically smaller landfills and closed, right?
18 So that is not discrete early action, it is just the small
19 to medium sized landfills that are closed, and the other
20 measure looks at efficiencies statewide at open and closed
21 landfills of all sizes? Correct?

22 Mr. Rauh - If I might help a little bit to clarify
23 this, Ted Rauh with the Waste Compliance and Mitigation
24 Program. Just quickly looking through the list, the first
25 one is the ARB standard which will apply to landfills, in

1 general, and will require a much lower emission from
2 landfill caps than is currently allowed. The second, the
3 increasing efficiency landfill methane capture, is really a
4 combination of things that you were mentioning, Chair Brown,
5 in terms of looking at the Bagner -- did I get the name
6 wrong?

7 Chair Brown - Jane Bagner.

8 Mr. Rauh - Thank you. That is a help, and also a
9 study that the Board completed recently that developed a
10 whole series of Best Management Practice potential ideas for
11 use of green waste, other materials, and other strategies to
12 best capture and manage methane on landfills, and especially
13 their caps. We do not know yet how that study may turn into
14 some actual standards, but we will be working with the ARB
15 after the adoption of the methane standard to determine what
16 can be applied as Best Management Practices by the Board, or
17 the ARB. That is an area where we are still in conversation
18 about who would be the lead regulatory agency for this
19 activity; once that is decided, or it will continue to move
20 jointly, we will establish some additional Best Management
21 Practice standards that would compliment the basic emissions
22 standard that the Air Board is developing.

23 Ms. Kuehl - Do you have time frame?

24 Chair Brown - The Bagner Study is due in 2010, end
25 of next year.

1 Mr. Rauh - And we are also -- we are waiting for
2 this standard to be adopted, which should be completed this
3 fall, and then we will immediately begin work with the ARB
4 on this Best Management Practices. In fact, there has been
5 communication already about who should lead that activity
6 from a regulatory standpoint.

7 Ms. Kuehl - Sure.

8 Mr. Laird - And, Madam Chair, can I ask one last
9 question? And just to acknowledge one thing on this chart,
10 and that is that we do not get credit for all the work that
11 was done in any category prior to the adoption of AB 32, so
12 that, in essence, using recycling as an -- well, just
13 anything that is within a 58 percent diversion rate from
14 1989 is the base. And so it is down from there and if
15 you were dealing with something like a discrete early action
16 on emissions from agricultural equipment, or something like
17 that, they have just never done good work on it, and so they
18 are starting where they can have a significant amount of
19 gains that can be captured. We have done a 58 percent
20 diversion and, basically, anything that is counted is in the
21 next 42 percent working toward zero. Is that correct?

22 Ms. Smyth - That is correct because, in that 174
23 MMTCO2e goal is established a baseline, and that is based on
24 business as usual. And so it would have incorporated all
25 the measures, not only by the Waste Board, but other state

1 agencies at that point, even they are ratcheting it back
2 down to the 1990 level.

3 Ms. Kuehl - Although, to be fair, we heard from a
4 number of entities when AB 32 -- right after it passed, as
5 you recall, former Budget Chair Laird, that many of them
6 complained that the work that they had done in reducing
7 emissions of any kind, did not count because the better they
8 had done, the more they still had to do instead of being
9 able to count what they had already done. So I think we are
10 not all that unusual. Where I think we are unusual, though,
11 is that there is not significant acknowledgment about the
12 role to play in this area in terms of reducing greenhouse
13 gas emissions, and I believe that the more we can do, and
14 the more we can distinguish those first two points, and
15 indicate what in the second point we are working on, I
16 think, the better because we do have the opportunity to be a
17 significant partner in many ways, I think.

18 Mr. Laird - It is perfect, and that is well said.
19 I just know, last year when I was trying to do the 20
20 percent per capita reduction in water use by 2020 bill, it
21 was the same thing -- how do you not penalize the people
22 that had the best water conservation now and ask the same of
23 them as the people that were the real wasters? And I just
24 appreciate Sheila bringing that up.

25 Chair Brown - Excellent point. Okay, well, keep

1 going.

2 Mr. Williams - Okay, here we go. Getting back on
3 track here. I think we had a pretty robust discussion of
4 the landfill methane capture item and certainly appreciate
5 Ted's comments there on that, so unless there are more
6 questions on this item, I think we will move on to the
7 Mandatory Commercial Recycling Measure in the Scoping Plan.

8 Currently, 60 percent of the waste landfill is
9 from the commercial sector, but most programs target
10 residential waste. Some jurisdictions are already moving
11 towards implementing Mandatory Commercial Recycling. A few
12 of the major metropolitan areas in the state that are
13 already heading in this jurisdiction include Sacramento
14 County, City of San Diego, and San Francisco. Sacramento
15 County estimates that the 21 percent jump of commercial
16 recycling tonnage is directly attributable to the Mandatory
17 Commercial Recycling requirement, coupled with technical
18 assistance and outreach during the first year of
19 implementation of their recycling program.

20 We have several studies underway currently looking
21 at various components of Mandatory Commercial Recycling.
22 While conducting these studies, we are also working on
23 resolving an issue related to the authority to develop and
24 implement this Mandatory Commercial Recycling measure. And
25 Brenda is going to touch in a some more depth later on about

1 the authority issue and the ongoing activities we are
2 pursuing to resolve that.

3 Mr. Laird - Then can I ask a couple of quick
4 questions? You mentioned Sacramento and Mandatory
5 Commercial Recycling. Is part of that because it includes
6 multi-family residential as a category of commercial?

7 Mr. Williams - Other are much more knowledgeable
8 than myself on the specifics of the Sacramento County
9 Ordinance. I would say that in the design of this measure,
10 multi-family housing is covered underneath this measure.

11 Chair Brown - I think -- and do not quote me -- I
12 think their ordinance dealt directly with businesses. I
13 think the multi-family and the business is -- and Rosalie,
14 you may know this -- more an issue of the holler (phonetic)
15 collecting both at the same time. But I think the
16 Sacramento County ordinance spoke directly to businesses of
17 a certain size requiring commercial.

18 Mr. Laird - I just thought, if that was an issue
19 that existing here, that is something that -- I just know
20 from my personal experience they did not pick up and they
21 said it was because, "My multi-family residential unit was a
22 business."

23 Ms. Mulé - Right. Madam Chair, if I may? Yeah,
24 in most municipal solid waste and recycling franchises,
25 multi-family residence, which is usually defined as four

1 units or more, is considered a commercial entity, and so it
2 is handled as a commercial entity with the same types of
3 containers as a business would have, and it is collected in
4 the same manner. So it is usually categorized as
5 commercial. Each ordinance would then specify if multi-
6 family is or is not considered commercial. For example, in
7 the City of San Diego, multi-family is considered commercial
8 and it is handled that way, and so it is not included in the
9 residential, you know, mandatory recycling.

10 Mr. Laird - Thank you. I did not mean to get too
11 far into it, but I thought that was an important point to
12 make because, if it turns out this is where we are going to
13 make some major gains, and that is a major piece of it, we
14 should call it out so people understand that is an issue.
15 One last quick question, because this is the first time in a
16 few places it says "lower bound." Does that mean the lower
17 range of what an estimate might be?

18 Ms. Smyth - Yes. We have actually some upper
19 ranges, but most of the numbers -- well, probably all of the
20 numbers in the Scoping Plan chose the more conservative
21 number.

22 Mr. Laird - Okay.

23 Ms. Smyth - And this is certainly --

24 Mr. Laird - Okay. It is just -- I was not
25 familiar with the term lower bound. I just was trying to

1 make sure it meant lower range, or lower end, that is all.

2 Ms. Smyth - Yeah. And it is very dependent on how
3 many materials are recycled, whether that occurs in
4 California, if you are just counting California greenhouse
5 gas reductions, and the types of materials because the in-
6 trained energy and each material that goes back into the
7 recycling stream is different for paper and metals and
8 glasses.

9 Mr. Laird - But whenever in this report you
10 indicate that it is the lower end of the range, it also
11 specifies that there is a place that we could have some
12 gains if we did whatever policy needed to be done to move it
13 up in the range?

14 Mr. Levenson - That is correct. And I think Clark
15 is going to, before we move off this slide, give you a
16 little update on our schedule; but you will be having policy
17 choices regarding thresholds such as that -- what is going
18 to be included, what are the enforcement issues, what are
19 the size of businesses and multi-family dwellings that will
20 ultimately impact that figure. But that, we think, is sort
21 of a bottom line that is readily achievable, that is
22 certainly more is feasible.

23 Mr. Laird - Thank you very much.

24 Mr. Levenson - Sure.

25 Mr. Williams - And as Howard stated, right now we

1 are in the process of drafting a White Paper to explore some
2 of these outstanding policy issues that could affect the
3 [inaudible] reductions we achieve from this measure. Our
4 plan is to currently schedule some workshops in July and
5 August to discuss the White Paper we are drafting. We are
6 anticipating bringing a status report back to the Board in
7 the September time frame to talk about the results of those
8 workshops and the issues contained in the White Paper. And
9 then, depending on the outcome of that, we are intending to
10 bring a draft regulation to the Board at the end of the year
11 and get the full rule-making process started in the first
12 quarter of 2010 for this measure.

13 Through increased production of markets for
14 organic products, we anticipate realizing 2 MMT of
15 greenhouse gas reductions, and the same comments for
16 Commercial Recycling also apply to this measure; this is a
17 conservative estimate that is represented here in this
18 reduction tonnage. In order to achieve these reductions, a
19 few cross-media issues need to be resolved. On the Air
20 side, local Air Quality Management Districts are seeking to
21 regulate compost facilities to reduce emissions of volatile
22 organic compounds from compost piles. Volatile organic
23 compounds are a precursor to ground level ozone, and a Clean
24 Air Act criteria pollutant. The San Joaquin Valley Unified
25 Air Pollution Control District will likely be the first Air

1 District to regulate green waste composting and has drafted
2 a rule. This rule is currently on hold so that the District
3 can investigate the emissions from composting and the
4 benefits of compost Best Management Practices. We are very
5 supportive of Best Management Practices to reduce air
6 emissions and are contributing to the study, which will
7 commence this summer and should be completed in the first
8 quarter of 2010.

9 On the water side, we are working with the State
10 Water Resources Control Board and its regional offices to
11 address water quality concerns related to the production and
12 use of compost. Concerns include increased salinity from
13 the use of compost, and storm water impacts associated with
14 the production of compost. Caltrans' use of compost has
15 been limited by concerns that compost will increase the
16 amount of salinity in California watersheds. One of the
17 primary concerns with salinity is its impact on drinking
18 water quality. With its Board staff, the State Water
19 Resources Control Board staff, and Caltrans staff are
20 working together to understand -- a few technical issues
21 there -- we are working to understand and address salinity
22 concerns. For example, we have developed compost
23 specifications that limit the amount of salinity levels in
24 compost. Related to storm water, compost facilities are
25 subject to a Waste Discharge Requirement Permit from the

1 State Regional Water Control Board's Regional Offices to
2 prevent water quality impacts from storm water runoff. Not
3 all composters have been subject to these requirements,
4 which could greatly increase compost operational costs by
5 requiring double-line stormwater basins, leachate
6 monitoring, financial assurances, and other requirements
7 similar to what is required in landfills. In July, we will
8 host with the State Water Resources Control Board a workshop
9 to explore composting operational procedures that could
10 achieve cost-effective water-quality benefits and be
11 incorporated into a statewide waiver of a waste discharge
12 requirement.

13 A couple other market development activities
14 underway to increase the production and use of organic
15 market products include looking at the benefits of compost
16 use on fire damaged lands, particularly to prevent erosion
17 and protect water quality, and also prevent further property
18 damage associated with mudslides.

19 Mr. Laird - Just a terminology question. When you
20 say "cross-media issues", it is really cross-agency
21 regulatory issues where there might be an interest of two
22 agencies in a regulatory issue? It is not cross-media
23 between T.V. and magazines or something?

24 Mr. Williams - No. I think one of my colleagues
25 coined a term that I like a lot, "when green emissions

1 collide."

2 CIWMD are the Waste Management Board's Lead Agency
3 for the Anaerobic Digestion Measure that was drafted for the
4 AB 32 Scoping Plan. A few of the activities we have
5 underway in support of this measure include participation on
6 a technical work group brought together by the Climate
7 Action Reserve, formerly known as the California Climate
8 Action Registry, to develop a Co-Digestion protocol. This
9 protocol will establish a methodology that can be used by
10 anaerobic digestion project developers to develop the
11 greenhouse gas reductions from their projects and then
12 verify and register those emission reductions with the
13 registry. This will allow for potential use in a market-
14 based system of greenhouse gas emission reductions. As you
15 are aware, the Air Resources Board recently adopted the Low
16 Carbon Fuel Standard, and we are working with them to add a
17 pathway to determine the carbon intensity of fuel produced
18 via Anaerobic Digestion. This will lay the groundwork for
19 Anaerobic Digestion to contribute to California's efforts to
20 reduce the carbon intensity of our transportation fuels.
21 Also, at this month's board meeting, there is an item on
22 Anaerobic Digestion Programmatic Environmental Impact Report
23 that would help support this measure.

24 In July, we are planning on coming back to you
25 with a full presentation on all the activities we have

1 underway in support of Anaerobic Digestion for some more
2 discussion.

3 Mr. Laird - Can I just ask a quick question?
4 Because the implementation schedule and the 90 facilities by
5 2020, I mean, that has come by since I have been here, but
6 it never occurred to me to ask -- is the goal that all 90
7 facilities will cover the entire geographic region of the
8 state in one way or another? Or are those just 90
9 facilities that cover 90 distinct areas, with many area
10 being uncovered by feeding into that?

11 Mr. Levenson - I think whenever we talk about
12 numbers of facilities, this is really trying to provide you
13 with an order of magnitude sense of what is needed in terms
14 of infrastructure development to handle all those materials
15 and get that amount of reduction, depending on the size of
16 the facility and geographic distribution of waste, you know,
17 it could be concentrated in one area or another, but it is
18 really to indicate the tremendous challenge that is ahead of
19 us in the industry and local governments to cite sufficient
20 facilities to handle these materials, and all the problems
21 that are associated with citing the cross-agency regulatory
22 issues, financing, local citing issues. So it is a daunting
23 task. We have not gotten to the point of specifying, you
24 know, we need a facility in this county, and three
25 facilities in that --

1 Mr. Laird - No, I understand and I read somewhere
2 in the last month that the European Union has 3,000, or
3 something of these within them, and I just did not
4 understand whether it is our goal to get them up and running
5 wherever we can, given all those obstacles, which are
6 tremendous, or whether there is a goal to have coverage of
7 the entire state, even if it is really limited and that is
8 the basic start of the infrastructure. I just did not
9 understand that.

10 Mr. Levenson - Well, one of the things, in July we
11 will certainly present you a lot more information on
12 Anaerobic Digestion, but they can be small modular
13 facilities that can be combined together to make a larger
14 facility, but they can be cited in rural areas, they can be
15 cited at a landfill, you know, on a landfill footprint. In
16 fact, we have a meeting next week with the Regional Counsel
17 of Rural Counties, JPA, to talk about the potential for some
18 anaerobic digestion projects in a USDA funding. We will see
19 if that pans out. I know that we have been talking -- Chair
20 Brown and I were over at the Energy Commission about a month
21 ago talking about the potential for some of their AB 118
22 funding to be used for anaerobic digestion projects. So we
23 are starting down the path, I think it is sort of uncharted.

24 Chair Brown - Well, and the 90 facilities really
25 speaks to the strategic directive, so it is a ton-based

1 thing, in essence. I mean, we have converted the amount of
2 tons that need to be moved out of the landfill into a basic
3 number of facilities just as a reminder, but what was
4 interesting at Biocycle at the end of April, there was a lot
5 more discussion of anaerobic digestion this year than in
6 years past. And, really, the conversation surrounded it is
7 not a one-size-fits-all for traditional composting
8 operations vs. anaerobic or size and scope of either of
9 those things, that it is jurisdiction by jurisdiction. So I
10 think the 90 facilities is really for us to keep in the
11 forefront that this is a major effort on our part to get
12 these facilities permitted.

13 Ms. Smyth - It is a very fluid number and based
14 on, I believe, 115-ton per day size facility. You know, a
15 large anaerobic digestion could be 350-tons per day, and so
16 that would have a big impact on the 90. The real fixed
17 number, as Margo mentioned, is the two million metric tons
18 of CO₂e (2 MMTCO₂e). That is the hard and fast number in
19 the Scoping Plan that we are shooting for.

20 Mr. Laird - Thank you.

21 Mr. Williams - Okay. The two last measures I am
22 going to cover are Extended Producer Responsibility and also
23 Environmentally Preferable Purchasing. Extended Producer
24 Responsibility, also referred to as Product Stewardship,
25 changes roles and responsibilities for managing waste so

1 producers assume more responsibility for their waste created
2 from their products. Local governments can gain some fiscal
3 relief for managing products for which they have no control.
4 Much of what determines whether a product is easy or
5 difficult to recycle, and the associated costs for recycling
6 that material, depends on the design of the product. When
7 producers are responsible for the cost of managing their
8 products, it creates an incentive for them to design
9 products to lower those costs. This can help get into the
10 fundamental issue of how to reduce the amount of waste
11 generated in the first place, and the process to realize
12 significant greenhouse gas reductions. And also of note,
13 EPR framework legislation by Chesboro (phonetic) passed the
14 Assembly and Natural Resources Committee recently.

15 Mr. Laird - That was easy.

16 Ms. Smyth [presumed] - Thank you, Board member
17 Laird, for your help on that.

18 Mr. Williams - On the Environmentally Preferable
19 Purchasing front, the Department of General Services now has
20 an environmentally preferable purchasing section in their
21 Division of Procurement, and are actually working to
22 incorporate more environmental considerations and also
23 lifecycle assessments into the State Procurement Contracts.
24 They have a new E-Procurement system, but it has yet to
25 incorporate data fields that allow for the collection of

1 data on environmentally preferable products. Staff is
2 continuing to work with the Department of General Services
3 on Environmentally Preferable Purchasing, as it provides a
4 great opportunity for the state to lead by example.

5 Ms. Mulé - So, Clark, we are not tracing -- or DGS
6 is not tracking this yet? I have to ask.

7 Mr. Levenson - I will take that.

8 Ms. Mulé - Thank you, Howard.

9 Mr. Levenson - Not yet. DGS has been trying to
10 establish an overall electronic procurement tracking system
11 for all of its contracts. It has been, as you might
12 imagine, a pretty arduous task, and it has been delayed
13 several times. I believe they just rolled it out in the
14 last month for their primary contracting. As Clark said,
15 they have not yet incorporated data fields for recycled
16 content products or environmentally preferable products,
17 that is the second round. And we are at the table with
18 them. It is something we have pushed and are working with
19 them, and they had planned to do it, but it is not in place
20 yet.

21 Ms. Mulé - So when do we hope to see this in place
22 so we could start tracking these reductions?

23 Mr. Levenson - I will have to ask DGS. You know,
24 it is not going to be this year. If we are lucky, they
25 would have something in place next year, but I do not have

1 the schedule on that.

2 Ms. Mulé - Okay, so I am going to just continue
3 this line of questioning -- and I do not mean to put you on
4 the spot, and DGS is not here, so it is not fair to them to
5 not be able to respond to this, but I want to ask these
6 questions. So once that system is in place, do you think,
7 then, we might be able to go back and capture some of the
8 data for previous years?

9 Mr. Levenson - That is a great question --

10 Ms. Mulé - So that, again, so that we can again
11 track those GHG reductions that have occurred, you know,
12 that are currently --

13 Mr. Levenson - My personal take on that will be
14 very fortunate to have the data of the moment to start from,
15 and have that entered into the database and move on from
16 there. I think going backwards in time, we can try, but I
17 know our problems in establishing databases and populating
18 those with past data, it is difficult to do.

19 Ms. Mulé - All right. Thank you, Howard.

20 Mr. Williams - Now I am going to turn things back
21 over to Brenda here.

22 Mr. Levenson - I just will say on the DGS issue
23 and we certainly could have a lot more discussion on that
24 and have DGS here, as well, but as Mark well knows, we have
25 been involved in the DGS EPP Task Force for many many years

1 and originally the Waste Board actually led the task force
2 because, really, nothing was happening. In the last, say,
3 two years or so, DGS has stepped up quite a bit in terms of
4 establishing its own section on EPP, getting some of the
5 resources it needs, and actually moving forward on the
6 procurement system. So I think we have all been frustrated,
7 to say the least, at the slow pace of activity here, but
8 also we do feel good that they have finally moved in that
9 direction.

10 Ms. Mulé - No, I understand wheels sometimes turn
11 a little slower than we hope, but thank you.

12 Ms. Smyth - Okay, this data comes from U.S. EPA,
13 from the Office of Solid Waste and Emergency Response
14 (OSWER). And the reason I put this slide in here is I
15 wanted to show the substantial levels of greenhouse gas
16 emission reductions that can be accomplished from waste
17 reduction and recycling and composting, using a materials
18 management approach.

19 Ms. Mulé - Brenda, what is OSWER? What does that
20 stand for?

21 Ms. Smyth - That is Office of Solid Waste and
22 Emergency Response.

23 Ms. Mulé - Okay, sorry. I was talking and --
24 thank you.

25 Ms. Smyth - I wondered that myself when I got the

1 slide.

2 Ms. Mulé - Okay, because I know that we like to
3 spell things out, so thank you.

4 Ms. Smyth - And I did not change their slide, I
5 just kind of -- so I can give them a little credit for that.
6 But the real use of this slide is to give you that relative
7 range that we were just talking about, and the importance of
8 the types of emission reductions that we can actually bring
9 to the table for AB 32. For example, the materials
10 efficiency emission reductions on this slide, they also
11 relate to our efforts on EPR. And then keep in mind that
12 these numbers that you see here are reported on a national
13 level, although they are still quite significant for us at a
14 California level.

15 Mr. Laird - Well, I was going to ask that because
16 I just assumed with their size they were national.

17 Ms. Smyth - Right.

18 Mr. Laird - Did they do any factoring out by
19 region? Do you know what the California piece of their
20 estimates are for any of these?

21 Ms. Smyth - We actually got this slide at a recent
22 -- at SWELMO (phonetic) Conference that Scott Walker
23 attended and passed the presentation over, and I was really
24 excited about seeing the numbers. And we have not gotten a
25 full report yet to dissect everything behind it.

1 Mr. Laird - Thank you.

2 Ms. Migden - May I -- the reduction of packaging
3 -- that is to say that is national and then it is like a --
4 what is that? 100 million tons?

5 Ms. Smyth - Well, what they are saying is, on a
6 national level, if we all reduced our packaging by 50
7 percent, we could reduce our greenhouse gas emissions on the
8 order of, say, 7,500 --

9 Ms. Migden - So this would be manufacturers
10 producing less because people do recycle their plastic,
11 right? It is not a matter of increased public cooperation,
12 it is sort of a change in the marketplace. And moreover,
13 does this contemplate the extra packaging, the fact that
14 packaging is even growing more substantially than it used
15 to? Does this project into this trend for greater and
16 greater packaging, as opposed to flat line of packaging?

17 Ms. Smyth - We do not have the report behind us
18 and so we do not really know if there are any projections
19 into the future behind these numbers, or if these are, you
20 know, status quo right now, numbers.

21 Ms. Migden - When can you have that for us?

22 Ms. Smyth - Uh --

23 Ms. Migden - I mean, because kind of just to be
24 fair, if you give us the numbers and you cannot really talk
25 about the numbers, and then we are going to ask questions

1 about the numbers. Why don't you hold giving this until you
2 have gone through it so we can have a more fruitful
3 presentation?

4 Ms. Smyth - Well, I can look into that. I think
5 the purpose of putting this slide up, and maybe it is
6 premature, but I just wanted to give the Board members a
7 flavor of the order of magnitude we are talking about
8 because sometimes --

9 Ms. Migden - Well, in any event, if I might, Madam
10 Chair, what is helpful to me would be where do we stand
11 because everything in life is relative and it is what makes
12 something more interesting, X is doing this, Y is doing
13 that. Secondly, it does probe, so I want to know if our
14 agency stands by these numbers. Somebody gave them to us,
15 we do not know. What would be honed, and how would I just
16 say this? Because, to me, if you are going to perk my
17 interest, and we are going into nibbling, and then you are
18 saying, "Well, geez, we haven't reviewed it," well, then, do
19 not give a preview because, unless we are re-calendaring,
20 and I do not want to -- that is helpful to me because if it
21 is going to be a one-sided presentation, where it is just
22 going to be didactic, it is not as useful because we do want
23 to weigh in and then ask these things and get the benefit of
24 your, you know, your thoroughness.

25 Chair Brown - If I might, the information in here

1 is helpful to Carole and, to me, I mean, it has peaked my
2 interest because the data behind it will be helpful as we
3 develop our reduced packaging. So if we could get the data
4 behind the U.S. EPA study, so we can look at the impacts in
5 California, whether it factors in the new security packaging
6 and size, so that as legislation or strategic directives are
7 developed, we can say we have this study with this data
8 behind it.

9 Ms. Kuehl - Just one further thing and that is I
10 do not think there is -- I mean, all of this is sort of like
11 an alternative universe. If we reduce this, and if this is
12 lessened, and if, then we could save these many, you know,
13 this many tons would not be generated. It does not seem to
14 me, though, that it answers the question of the impact of
15 the economic issues that we are going through. When we hear
16 in another report that China is not taking as much paper
17 from us to recycle because consumers are not buying as much,
18 and therefore we do not need as much packaging, that is a
19 reduction in packaging use caused by consumer activity. It
20 is the same with the extended life of computers. The life
21 of my computer is extended right now because I am not buying
22 a new one. And so, in a sense, we are not doing anything to
23 accomplish this goal, but the goal is being helped along. I
24 do think, though, it is somewhat difficult to measure
25 because it is measuring a negative, you know, what didn't

1 you buy? And therefore saved packaging, or extended
2 computer life. So I appreciate that -- I think it is
3 interesting to fold in solid waste and emergency response in
4 one agency, too, but, you know, not to criticize the use of
5 this slide, but --

6 Mr. Levenson - We hear you. We will try and get
7 the report and make it available to you, and then as we have
8 further discussions about packaging, use that information to
9 the extent it seems appropriate.

10 Mr. Laird - Sheila, I couldn't help but think that
11 it is very easy for former legislators from San Francisco,
12 Santa Monica, and Santa Cruz to talk about alternative
13 universes.

14 Ms. Kuehl - That is okay. Since Star Trek came
15 out, and the whole premise of it is that history changed in
16 a moment, then I think more people are familiar with it.

17 Ms. Smyth - Okay, moving along. This slide is
18 actually from the same report, so we might have the same
19 comments on this slide, but again, it is a relative cost
20 strategy, looking at our times of greenhouse gas reduction
21 strategies that we can effect in recycling and waste
22 management and energy recovery from landfill gas, and how
23 they kind of, on an international level, measure up against
24 other types of strategies in the cost field. These are
25 presented in yours, and I think the take away here, without

1 getting into the specifics that I do not have behind the
2 slide, are that our strategies often times are negative
3 abatement costs, which means it is a really smart thing to
4 do, it does not cost a lot of money because you have some
5 revenues coming in and, as Board member Kuehl pointed out,
6 that is very much dependent on economic situations
7 worldwide, as well.

8 Okay, so back to the Scoping Plan, I wanted to
9 mention some other activities that are included in the
10 Scoping Plan that intersect with our work here at the Waste
11 Board. Some of these strategies have been introduced by the
12 Air Board, some are coming from other climate action team
13 subgroups and their submitted measures to the Scoping Plan,
14 and some are just major themes that are woven throughout the
15 Scoping Plan. You are probably aware that these are all
16 areas where the Waste Board is already engaged, and we will
17 continue to support these areas we collaborate with these
18 agencies on the climate change perspectives.

19 Some of the major issues that the Air Board is
20 working with are how should the scoping plan rely on Cap and
21 Trade, how should allowances be distributed, what should
22 roles of offsets be, what are the costs to implement per ton
23 of greenhouse gas reductions reduced, and how will the
24 Scoping Plan impact air pollution and public health.

25 And now the key issues for the Waste Board on the

1 area of authority, since climate action team agencies and
2 Boards will be the lead for implementing their sector
3 measures, it is going to be important that the Air Board
4 uses its broad authority under AB 32 to provide a sufficient
5 implementation authority to lead these entities.

6 Discussions are underway with Air Board staff to reach the
7 collaborative decisions we need on when the Air Board will
8 seek, or have the other entities and agencies seek
9 additional legislation to implement our specific measures.
10 And that is key with our Mandatory Commercial Recycling
11 measure.

12 In terms of resources in the Air Board's
13 administrative fee, the Waste Board's ability to implement
14 these measures will depend on the availability of sufficient
15 personnel resources. Waste Board staff had worked with the
16 Air Board staff on this, and the Air Board has included our
17 staff in needs in the administrative fee regulatory package
18 that is part of the AB 32 process. On the area of Indirect
19 emissions, indirect emissions, or emission reductions, will
20 be part of this discussion that ensures that the broader
21 regional and global benefits of system-based recycling
22 measures are recognized and accounted for. For measures
23 like recycling, a systems approach will be required, which
24 looks at boundary issues as regional opportunities. The
25 full potential contribution of system-based measures, like

1 recycling, can be substantial, as we saw in some of the
2 earlier slides. And, while they are difficult to quantify,
3 they cannot be ignored. On integration of our measures with
4 other sectors, integration of the Waste Board measures with
5 those of the other sectors is also very important. And, for
6 example, the agricultural and water sectors will be critical
7 for creating markets for composting, which in turn will
8 contribute to carbon sequestration, reductions in chemical
9 fertilizers, herbicides and pesticides, and also water
10 conservation. And other example is the integration of the
11 Renewable Portfolio Standard, which will be critical for
12 incentivizing those measures on landfill gas to energy and
13 anaerobic digestion.

14 In terms of Greenhouse Gas Quantification and
15 Protocol Development, the role of the local governments here
16 and the implementation of these measures is equally
17 important. The local government operations protocol in
18 combination with the community protocol will hopefully
19 provide that inventory-based accounting approach, along with
20 that critical systems approach that will be encouraging
21 recycling. Waste Board staff are engaged with the Air Board
22 staff in the development of these essential protocols.

23 So let's talk about the next steps. We will
24 continue to work with the Air Board staff on all of the key
25 issues that we just talked about. We will complete several

1 projects that are underway, and that are key elements of the
2 Waste Board strategies in the Scoping Plan. These are the
3 projects listed here, and we can answer any questions on
4 these projects if you would like. And with the additional
5 necessary resources, we will complete the implementation of
6 the Waste Board strategies according to the AB 32 schedule.
7 We have more next steps, and that is that we will continue
8 to participate on the Climate Action team working groups,
9 which have been recently re-described and we are working on
10 the Scoping Plan Group, the Energy Group, the WCI, Western
11 Climate Change Initiative Group, the Economic Analysis
12 Group, Research, and the State Government Groups. We will
13 work on Protocol Development, as I mentioned, with both the
14 Climate Action Reserve and the Air Board. We will continue
15 to participate in Climate Change activities, as well, with
16 other entities like the Chicago Climate Exchange and USEPA,
17 and we will also work with the Board members on the
18 development of a new strategic directive that I have heard
19 you are interested in on Climate Change activities.

20 So with regards to the new Strategic Directive, I
21 wanted to take this opportunity to put up some ideas that we
22 have for you, and just say that I know we all get this, but
23 a fundamental Climate Change principal for the Waste
24 Management sector is that efforts to maximize diversion also
25 maximize greenhouse gas emission reduction. And then some

1 specific efforts that are in line with the implementation of
2 our Waste Board Strategies in the Scoping Plan, and with the
3 next steps that I just identified, are that we would
4 continue our work with the Climate Action Team, the Air
5 Board, and other state agencies in this arena, we would
6 implement our Waste Board measures that total -- achieve
7 greater than 10 MMTCO₂e mission reductions. We will further
8 the development of alternative energy and biofuels from
9 post-recycled waste materials. And then we will address the
10 need for regulations for air and water quality, consider
11 impacts on AB 939 and also climate change. And, similarly,
12 we will include climate change impacts as criterion in
13 reviewing our own Waste Board regulations. But these are
14 some ideas that feed into that new Directive.

15 And last, I would just like to put up some key
16 staff that worked very hard --

17 Mr. Laird - Madam Chair? I am sorry, I did not
18 realize you were moving past that. I would just sort of
19 state, again, that for me, I do not know if you would call
20 it a core value or an over-arching thing, but just that for
21 the Strategic Directive, that we at least think about this
22 differently; rather than just looking at it as something
23 like, how do we measure what we get as savings from
24 everything that we do already, or are planning to do, how do
25 we in a more over-arching way, say we will achieve savings

1 from everything we do, that is a goal, and how do we then
2 look at all our individual programs with that in mind,
3 rather than just do the programs the way they are and try to
4 measure what the savings are from them. And I know it
5 sounds like a glass half-full, half-empty argument, but I
6 think it is very important that, when we get to a Directive,
7 we express that in some way.

8 Chair Brown - Well, you actually hit what I was
9 thinking, too. This is a great launching point, it is a
10 great opportunity to throw some ideas on the table. I think
11 what is clearly missing here is a policy direction from this
12 Board, timelines, and measures that we can evaluate the
13 success of what we are doing against a number. And that is
14 what our role is, is to define in these Directives what we
15 intend to achieve on what particular time line, whether we
16 want it to be 10 million metric tons of CO2e in recycling
17 measures, and then we allow you to tell us how to get to 10
18 vs. the five that are on the low-bound side. So I think in
19 the next month we take this material, go back, you know,
20 noodle through it, or whatever, come up with our policy
21 directions on what we want to see as far as statement in
22 here, and direction that we want to go with some timelines
23 and some goals.

24 Mr. Laird - And I think to just emphasize one
25 thing you went by, is that obviously when we had that

1 exchange earlier with the Air Board, one of the big issues
2 is measurement, and how measurement is done, and I think
3 that needs to be a key part of a Strategic Directive because
4 it seems to me that one of the odd things about this is, is
5 that we do this and we know that there are savings, and thus
6 far some of it has not been recognized because we cannot
7 demonstrate the measurement right, not that we are not doing
8 it, not that we are not realizing the savings, and so the
9 question is, is what is the directive on measurement that
10 allows us to get there on those issues.

11 Chair Brown - Okay, Sheila?

12 Ms. Kuehl - I had a separate somewhat overarching
13 issue that is beginning to occur frequently in some of the
14 materials that we review, and that has to do with I guess
15 what I would call the MTBE issue, which is one of us thinks
16 this is really good for the world, and the other one says,
17 "Yeah, but you are poisoning me." And that is going to come
18 up in a number of issues, including I think maybe even the
19 one today additionally. But I wanted to return for just a
20 second to the salinity issue in the groundwater and
21 composting that you brought up. And to suggest that we
22 might want to have a further discussion about resolution
23 techniques between and among our Boards here in the
24 building. I do not see that it is at sort of a critical
25 point at the moment, but simply having one Board identify

1 that there is a potential down side to having composting
2 because of its impact on water quality, which may or may not
3 be a very serious problem. But I think sort of the early
4 warning signals about not letting this become kind of an
5 urban myth, or an unstoppable force that says, "Therefore,
6 we should really be rethinking composting," if you know what
7 I mean. So I do not really know what that means, exactly,
8 but I was thinking about it when we get to the next Agenda
9 item, I want to talk about it again and see if there is a
10 way to get the discussion happening at the earliest possible
11 moment about resolution, if possible.

12 Chair Brown - You ought to mention -- is the joint
13 hearing we have June 5th dealing with salinity with the Water
14 Board at all? Or is that just AD and other issues? Aren't
15 we having a joint workshop with the --

16 Ms. Smyth - We have a joint workshop in July.

17 Chair Brown - July.

18 Ms. Smyth - We actually -- I definitely hear your,
19 Board member Kuehl, and I do think we could benefit from
20 some inter-BDO work on that. On the particular issue of
21 compost and salinity, we have been working with the State
22 Water Board and the Regional Board for, gosh, years now, but
23 the upcoming workshop is a joint effort. We have had staff,
24 in fact, we actually have a liaison working between the two
25 Boards on this issue, as well, on special assignment. And

1 what we are addressing are two components of that; one is
2 compost facilities and the issues of water quality that are
3 generated at compost facilities via storm water runoff and
4 groundwater, and we are working with the State Board and
5 regional agencies to develop a statewide waiver that would
6 define how can we protect those water quality issues in a
7 more creative way, rather than the types of protections that
8 are provided at landfills, that compost facilities do not
9 do, and probably would not stay in business if they had to
10 do. So we are getting more creative on looking at the
11 potential risks to groundwater and how we can protect each
12 individual types of case, and bringing that forward. The
13 other component with water quality is the use of compost and
14 we are developing compost specifications that can be used,
15 that look at things like salinity, and guide our compost
16 facilities to produce a product that meets those
17 specifications, so that Caltrans knows what they are putting
18 out there, and they are not required by the regional
19 agencies to write a report of what discharges in a lot of
20 permitting requirements, if we know we are meeting
21 specifications.

22 Mr. Levenson - I would like to add to that, the
23 late July workshop, it is a staff workshop, but it is really
24 designed to get early stakeholder involvement in this issue,
25 and that has been one of the core principals of the Waste

1 Board and I want to give credit to Mark for pushing this
2 with Executive Director Dorothy Rice and the Water Board,
3 and she has been very amenable to that, and it is somewhat
4 of a change in the way the Water Board approaches regulatory
5 activities, and she and Mark have really pushed this and it
6 has been a difficult one. We have been working on this for
7 many years and we finally have gotten to the point where we
8 think the Water Board and the Regional Boards will be
9 amenable to something that protects water quality; as Brenda
10 said, we are not interested at all in diminishing water
11 quality, but how do we achieve that in a more flexible
12 performance-based kind of approach? So I think the date is
13 late, it is July 24th or something like that, and it should
14 be of interest to a lot of people in this audience, and
15 certainly the Board members here.

16 Mr. Laird - Madam Chair?

17 Chair Brown - Let me just add one quick thing.
18 Also, Tam Dudoc has lent herself to the effort, as well, and
19 is interested. She is our Board Member Liaison, as well, so
20 she just mentioned last week an interest in participation in
21 helping to coordinate joint activity, as well. John?

22 Mr. Laird - I think, to take Sheila's point a step
23 further, because I really like the response that you just
24 had, but maybe to use a more base definition, let us just
25 say, and I know it does not work this simply, let us just

1 say that a Water Board pushes back on salinity really
2 strongly on something, and what it does is it means organics
3 do not go into composting and re-use, but go into landfills,
4 and therefore there is a higher methane release and there is
5 higher leachate, and so -- I think the question is, how do
6 you identify those trade-off's as they cut between the
7 agencies because, yes, the Water Board might be fine if you
8 push it into an Air Board issue and they are out of it, you
9 know, because then it just becomes a greenhouse gas emission
10 issue, rather than a water quality issue, and I think one of
11 the ways I read Sheila's question was, is how do you
12 identify those kinds of conflicts as soon as possible to try
13 to, in some framework, have people understand the trade-
14 off's, rather than just get it out of my jurisdiction and
15 somehow you have solved the problem? And how early can you
16 identify those? As somebody that spent all of last year
17 trying to get 10 percent of the salinity out of underground
18 water so that recycling became easier, I understand that,
19 but if it then becomes an emissions issue, or a sewer
20 treatment issue because of leachate, and that is the trade-
21 off, maybe those are not good trade-off's and you have to
22 deal with the salinity as the issue. And that is the thing,
23 I think, is just how do you reduce it to those global things
24 so that you address the trade-off, rather than just try to
25 deal with it issue by issue and constantly be flummoxed.

1 Chair Brown - I think, Howard, you touched on a
2 little bit of this. We have dealt with this and everybody
3 has worked singly on their issues alone; Air only cares
4 about air, Water only cares about water, but I think with AB
5 32, and the cross-agency issues and the need for
6 collaboration in some of these things, we are viewing all of
7 those issues in a different way. But I think it is just
8 beginning and we have a great collaboration with the ARB, we
9 are charting new territory with the Water Board, but neither
10 of those agencies is willing, nor should they, to step back
11 on, you know, air quality standards, or water issues, and
12 water quality. So, you know, everybody sort of used their
13 thing as their thing and --

14 Ms. Kuehl - Well, but in the area of medicine, we
15 saw more of a more over the last couple of decades to
16 holistic health, and I think that is what we are talking
17 about for GHG, as well, which is the notion that we are all
18 aiming towards a holistic health approach, and perhaps we
19 ought to at some point make the statement from this Board
20 that we are a participatory agency in the holistic health of
21 the environment. I mean, it used to sound a little more
22 air-headed than it sounds now that it is so realistic in its
23 relationship to human health. So it could be one of our
24 guiding principles, that we will always participate in an
25 approach that is considered holistic, so that the work helps

1 to underpin our approach to working with the Air Board, and
2 the Water Board, and hopefully eventually we chain them into
3 participating under the same principle.

4 Ms. Migden - Madam Chair? I agree with that, but
5 at some point, I think we were left bereft of statutory
6 clarity, and we should always work, but everyone has an
7 appointed anointed duty that, by nature, is a little bit of
8 a conflict. And somehow, of course, we ought to continue to
9 work things out, but it is like so much of it, and I am so
10 sharp now because I had a 45-page questionnaire for Senate
11 confirmation consideration, or whatever it is, and learned
12 everything in America, but so much of it is we need
13 regulation about, you know, Commercial Recycling, food
14 scraps at 30 percent of what we do not have, we squabble
15 with other agencies because no one knows who is really in
16 charge or what the purview -- it is almost like the leftist
17 struggle, but without the authority, we have done great.
18 And nobody wants bad compost in the air, but at the same
19 time we do not know what to do with the stuff. So, you
20 know, I feel like we do and I do not want the buck to keep
21 getting passed to us to have to resolve -- that is not our
22 role to be conflict managers, our role is to take, you know,
23 a mission, and try to succeed at it. And, respectfully, I
24 would say we should not be reticent, Madam Chair, about
25 calling on enough already, let's figure out how this darn

1 thing works between very well-meaning group-minded,
2 important, you know, entities. So I do think that, but I
3 think we kind of kick it around a lot and, jeez, what are we
4 supposed to do with them? So I would just really like to
5 pinpoint here is what we need to do better. And I know I
6 have been thinking about it. For instance, one of the
7 questions in this questionnaire is about problems that dated
8 back to year 2000, to explain why we did not get along with
9 different agencies, and it is 10 years. So what am I
10 supposed to say about things that happened in 2000? And it
11 is an old audit or something. So, that is what I am saying,
12 I don't know, it is an old audit, you want me to answer for
13 10 years ago a complaint? But on the same token, Madam
14 Chair, I am feeling like I do not like the tenor of some of
15 that, as if it is within the scope of capability within our
16 authority to do much about some of what might be very
17 appropriate conflict and others that may be easily
18 resolvable. Thank you. I said my peace.

19 Chair Brown - Thank you, Carole.

20 Ms. Mulé - Madam Chair, if I could just address
21 some of the questions and concerns that my fellow Board
22 members have. As Brenda and Howard have indicated, we have
23 worked with our fellow agencies, if you will, the State and
24 Regional Water Boards, as well as the State and Regional Air
25 Boards, on a variety of issues, regulations that have come

1 up, been drafted, and we were unaware then -- I, personally,
2 as well as some of my other Board members and staff, we work
3 personally on some of these regulations to ensure that they
4 take into consideration not only, you know, the goals of
5 that organization, but the goals and the mission of the
6 Waste Board, as well. So we are doing that. And, again, I
7 think Margo made a great point in that AB 32 really is that
8 over-arching policy, if you will, that really is bringing --
9 it is almost like it is forcing all of us to work together
10 even closer, because it does bring together all these
11 different issues under the realm of greenhouse gas
12 reduction. So I guess from my perspective, I think that we
13 are making progress, we have made progress; that is not to
14 say that there is not more work to be done. But from the
15 five years that I have been serving on this Board, I can sit
16 here and tell you that we are making progress in working
17 with other agencies. Mark and I have been working with
18 CASA, the Association of Sanitation Agencies, they are
19 working with us and our other sister agencies, if you will,
20 to help develop a checklist for cross-media issues. So,
21 again, we are doing some things, there are some things in
22 the works, but it just seems like, again, sometimes we are
23 just not moving as quickly as we would like, but we are
24 making progress. Thank you, Madam Chair.

25 Chair Brown - We do not want to appear to have

1 glossed over the recognition for all of your staff that has
2 done an excellent job putting all of this together and
3 continues to work on all of the climate change issues, so
4 thank you all. I think that great discussion item -- we
5 have a little bit of work to do before the next agenda item
6 gets put together, so we will just put a title up there that
7 we are working on it, and get our hands dirty. If --

8 Mr. Laird - Madam Chair?

9 Chair Brown - Yes.

10 Mr. Laird - Just very quickly, I just want to echo
11 your comments in saying, do not take the fact that there
12 were 10,000 questions as a lack of good feeling about all
13 the work, and I know that staff has gone out of their way to
14 give lots of individual briefings to me, and to provide
15 materials, and I really appreciate it. And I think we are
16 getting a hold of this in a very very good way. And I am
17 just grateful for the discussion we had today.

18 Chair Brown - Right. Okay, so we are going to
19 move to Committee Item D, Board Item 11, which is the five-
20 year tire plan. As soon as they finish that, we will take a
21 30-minute break, and then finish with Item 12. So let us
22 reset --

23 Mr. Levenson - If we can get the PowerPoint, thank
24 you. And while we are getting that up, I will briefly
25 introduce this item.

1 **Item D. Consideration Of The Adoption Of The Biennial**
2 **Update Of The Five-Year Plan For The Waste Tire Recycling**
3 **Management Program (5th Edition Covering FYs 2009/10-2013/14**
4 **(Tire Recycling Management Fund)**

5 Mr. Levenson - As the Chair said, this item is the
6 Consideration of Adopting The Biennial Update of The Five-
7 Year Tire Plan. And as you know, statute does require the
8 Board to adopt a Five-Year Tire Plan to expend the Tire
9 Recycling Funds. And then we are required to revise it
10 every two years. The last version was adopted in May 2007,
11 so it is time to adopt this next one. In February, we
12 brought an item before you that talked about the various
13 elements in the plan. We only had about 80 slides, we
14 thought we would reprise that again today -- I am kidding --
15 we only have about eight or 10 slides. That went over like
16 a lead balloon. That is okay.

17 Chair Brown - I am up for about three.

18 Mr. Levenson - Okay. But we did have a discussion
19 in February with the Board, and there were a number of
20 things that you asked us to change, we have changed those in
21 the plan, and they are outlined in the item, itself. Before
22 I turn it over to Sally, to quickly run through the plan and
23 the major changes, I do want to point out that one issue
24 that stakeholders have brought up, and she will reiterate
25 this, is the need for an overall program evaluation about

1 the Tire Program activities and their effectiveness. Over
2 the years, I think that the Board -- all of the staff and
3 the Board members who have been involved in the plan -- have
4 tried to move in that direction to one degree or another,
5 and that has been reflected in numerous agenda items over
6 the last decade on Board policies and various programmatic
7 and financial changes. But it is true that we have not
8 really undertaken a formal rigorous evaluation of all --
9 particularly on the market development side of all those
10 activities. And so, as a result, we have asked our
11 contractor under the Tire Business Assistance Program, Beck
12 & Associates, to help us develop and conduct an overall
13 program evaluation. And what we plan to do is in August,
14 and we will come back to you with an agenda that describes
15 the latest market survey that Beck has conducted for us,
16 which we had a workshop on last month, some very interesting
17 trends and data on diversion, and also lay out a timeline
18 and a process for that program evaluation with the goal of
19 having it done very early -- we are shooting for January of
20 next year, but --

21 Ms. Kuehl - Does the word "survey" mean everybody
22 will be asked, or a sample?

23 Mr. Levenson - Well, that will be -- what we bring
24 to you in August is the process; we would not do a survey of
25 everyone unless, you know, we thought it was worthwhile.

1 But it would be more conducting stakeholder workshops,
2 getting input, conducting analyses of the grant programs,
3 where the monies have been spent, it could be a variety of
4 different evaluative techniques.

5 Chair Brown - But you said it could be all of
6 those, or it could be --

7 Mr. Levenson - Could be. We have not -- we are
8 just talking about scoping it out so we can bring that back
9 to you.

10 Ms. Kuehl - Well, just so we do not revisit this
11 in August and bring up a critique that you would say, "I
12 wish I had known that sooner," I think when we are talking
13 about doing an overall program evaluation, that there is a
14 big difference between a very broad gathering of information
15 and a smaller gathering of information, and then sort of
16 extrapolating in a way that may or may not be supportive.
17 So I am kind of interested in how broadly you think the
18 contractor will be doing this survey because I think what we
19 want to know is a snapshot of what is really going on in
20 California around these issues. And I am not sure whether
21 extrapolation is the best way to get the information, but I
22 am not a data specialist.

23 Mr. Levenson - Well, the market analysis that you
24 will see in August, and a draft of that is already
25 available, we had the workshop late April, is a very

1 extensive analysis of market trends. I think it has some
2 very revealing trend analyses. It talks about the flat
3 nature of the diversion percentage -- basically, it has more
4 or less stayed the same within some error -- concerns about
5 whether tied-to-right (phonetic) fuel is still going to be
6 as prevalent a use as it has been in the past because of the
7 downturn of the economy, trends in civil engineering
8 applications, other issues like that, so there is a lot of
9 that kind of market snapshot analysis. That is based on
10 extensive interviews with virtually all the processors in
11 the state, and many many others.

12 Ms. Kuehl - Well, let me bring up a point that I
13 -- well, if not a point, at least a question that has
14 started to bother me a little bit, and I think reading
15 Terry's Tire Report, the last one, related to a survey that
16 he reported on. It seems to me there is just the beginning
17 of an urban myth about the toxic nature of the materials
18 made from tire --

19 Chair Brown - Athletic fields?

20 Ms. Kuehl - Yeah.

21 Chair Brown - Like ground surfaces?

22 Ms. Kuehl - Like children's playgrounds, etc.

23 Chair Brown - I think that was Michael Blumenthal.

24 Ms. Kuehl - Well, Michael said in his letter that
25 he could not be here, but he wanted to raise the issue.

1 Terry reported in his report that there was a survey
2 indicating that it was not the case that health was impacted
3 by this. It seems to me that -- I do not know what, in
4 essence, we do about it between now and August, but I do not
5 want this to get ahead of us. I want us to be able to say,
6 "This is not an issue," if it is not an issue for us. And,
7 again, as we go along, I think there ought to be some report
8 or at least attention paid to refuting, if it is refutable,
9 any of this organizing that might be done among parent
10 groups to raise their fears. Now, admittedly, I came over
11 from the Legislature, so I have only seen things like
12 mercury in immunizations be an issue, where parents were
13 freaked out about immunizations, they stopped immunizing
14 their children in significant numbers, with all of the
15 scientific evidence, it looked to me, going the other way.
16 Now, there is still some question, but I do not want us to
17 start to get into this in terms of our ability to say to
18 people, "This is a really good thing to use ground-up tires
19 for," and sort of this question of health. I would love to
20 see it refuted in some place, in some way. And I think it
21 may not yet have impacted our market, but I see it as an
22 issue that could become more vocal.

23 Mr. Levenson - It is indeed an issue, Member Kuehl
24 and last -- well, actually, it is almost two year ago now,
25 this issue came up in terms of some of the playgrounds and

1 the Board has a contract in place with the Office of
2 Environmental Health and Hazard Assessment, OEHHA, to look
3 at the existing literature, conduct some additional tests of
4 artificial fields vs. natural fields, and then report back
5 to the Board. And that is due back, I believe, early next
6 year. One of the ideas behind that was to have OEHHA, which
7 is our CALEPA independent department, assess that
8 information because we are getting conflicting claims by
9 some of the manufacturers who say it is safe, others who are
10 concerned about it, and we wanted to have OEHHA with their
11 toxicological experts, you know, take a look at it.

12 Chair Brown - Can they do some early indicating --
13 I mean, the comprehensive study that we have contracted with
14 them is not due until May, but part of that is an evaluation
15 of current data and information available; if they could do
16 that early, I think a lot of the misinformation is out there
17 because of the lawsuits that the Attorney General brought
18 against the three schools, but that was not related to the
19 tires, as I recall, that was the paint in the coloring of
20 the green grass. And so there is misinformation about the
21 lead-based paint in the green grass part of the turf, as
22 opposed to the tires that are being utilized. So --

23 Mr. Levenson - We can talk to OEHHA about a
24 potential preliminary presentation. They have just about
25 completed that literature analysis and are starting the

1 testing. I think we also, internally we have committed to
2 putting up more of the existing studies on our website and
3 providing that information, making that available to the
4 interested parties, so we could continue to do more of that.

5 Chair Brown - Well, when we do our grants, I mean,
6 do we send that information out as a matter of course when
7 we provide and do grants to these school districts, or for
8 everybody applying for athletic surfaces and, you know, when
9 we provide grants for these tracks and playgrounds, we
10 should make sure they have in their hand, and maybe it
11 should be part of the outreach and education, when they
12 install a surface, they educate their parents.

13 Mr. Levenson - And that is part of the purpose of
14 the OEHHA study, because we did not feel comfortable having
15 --

16 Ms. Kuehl - But, Howard, may I just say it is -- a
17 year from now is too late. This is actually picking up a
18 little steam, and I understand, you know, that is the best
19 way to approach something is to have a supportable study,
20 etc., but 12 months down the line, you know, this issue may
21 be much bigger and we have done nothing to kind of help with
22 it.

23 Mr. Levenson - Can I ask a contrary question?

24 Ms. Kuehl - Please.

25 Mr. Levenson - What happens if the OEHHA indicates

1 that there is a problem?

2 Ms. Kuehl - Well, it could.

3 Mr. Levenson - And that is one of the reasons why
4 we -- and I do not know that it will, but that is one of the
5 reasons why we contracted with them, so we had our own
6 independent assessment of that information. So we have been
7 in this quandary, frankly, for probably two years, and not
8 quite knowing how to approach this. So I appreciate that
9 you are raising this and urging us to figure out a more
10 expeditious way to deal with it.

11 Ms. Kuehl - Well, it seems to me it opens us to a
12 great deal of criticism if we are, for the next 12 months,
13 in the dark, saying to everybody, "Oh, don't worry, don't
14 worry, here is a bunch of money, go cover your playground
15 with this," etc. etc. So either way, we are going to be
16 criticized. It seems to me we have to have some notion, you
17 know, if the literature that they have gathered and
18 summarized generally trends towards not a problem, then in a
19 new study, I mean, you know, it could be a new study, but it
20 still would not go with the general literature.

21 Mr. Levenson - Shirley Wagner of our Financial
22 Assistance Division indicates -- I think I am hearing this
23 by the telephone method, that --

24 Ms. Kuehl - Well, I think we learned in the 2nd
25 grade that was not terribly efficient.

1 Mr. Levenson - I mean, we do have -- and Holly
2 from our Legal Office can speak to this, as well, we do
3 provide that information in some of our notices of funding
4 available, we do link to some of the existing studies, and
5 we have disclaimers in the grant agreements about people
6 needing to take a look at that information, and that the
7 Board itself is not liable for this.

8 Chair Brown - Well, that clears up one end of it,
9 but I think the other side that I hear from Sheila is the
10 concern that the whole market could collapse between now and
11 well before May, so maybe we should look in this program
12 evaluation at tools and steps that we can take in the short
13 term, that will shore up this program, given, you know, how
14 much we have invested in it.

15 Ms. Kuehl - Or maybe it is only .02 percent of the
16 market going into playgrounds now, and therefore, you know,
17 it will not collapse the whole market, but we want to be
18 aware that -- we just do not kind of need the, "Oh, they
19 don't care about our children" approach.

20 Chair Brown - Right. But the other thing that
21 occurred to me when Sheila was asking the initial question
22 is, you know, we do so many workshops, I think that a few
23 workshops in this evaluation may be helpful, but I think
24 that the smaller individual is going to be key, in my mind.
25 I mean, I think going out there and having the individual

1 conversations, as well, interviews. Okay, now we will let
2 Sally start.

3 Ms. French - Hi. I am Sally French. I am with
4 the Statewide Technical and Analytical Resource Division.
5 The Fifth Edition of the Five-Year Plan describes two
6 overall strategies, one for a strong regulatory framework
7 that does not stifle the flow and process of tires, and a
8 second, to expand our infrastructure for manufacturing used
9 tire derived products. The Board has two Strategic
10 Directives and two complimentary goals. The California
11 Scrap Tire Market Report will cover Fiscal Years 2000 and
12 2008 and will be presented in August. At the same time, we
13 will also present a time line and process for completing an
14 overall program evaluation.

15 In the Five-Year Plan, we have reduced the dollars
16 in the first three years of the plan for our outreach
17 campaigns. By doing this, we have been able to increase
18 three of our grant programs, our Local Government Waste Tire
19 Clean-Up, our RAC, and, third, the Tire Derived Product
20 Grants. We have also removed the reference which gave
21 priority to the tire derived aggregate projects in our loan
22 program, and we have also provided a clearer description of
23 our web-based Grant Management System Projects. That
24 concludes. If you have any questions --

25 Ms. Kuehl - There was a point skipped that was in

1 the summary for the Board, which was related to the minimum
2 energy efficiency standard for replacement tires. Is that
3 still -- it indicated in the point, and I think in our
4 notes, that the staff felt that the proposed study was still
5 warranted. We had a question about --

6 Mr. Levenson - Member Kuehl, that is an issue --
7 we provided a memo to you about a month ago on the history
8 of the Energy Commission's and our efforts on the Tire
9 Efficiency Program, and we did feel that there was still --
10 it still warranted additional funding by us to finalize the
11 information that is needed to fully address those efficiency
12 issues. We do have a representative from the Energy
13 Commission here who is responsible for the Tire Efficiency
14 Program if you care to ask --

15 Ms. Kuehl - So is this about how many miles you
16 use your tires? Or is this about inflation of tires?

17 Mr. Levenson - This is about kind of the inter-
18 relationship between the life of tires, rolling resistance,
19 fuel efficiency, and then how long the tires end up lasting
20 given those conflicting parameters, much like our cross-
21 agency regulatory agencies, there is some conflicting goals
22 here for rolling resistance vs. efficiency.

23 Mr. Tavel (phonetic) - My name is Ray Tavel and I
24 am the Manager of the Fuel Efficiency Tire Program for the
25 California Energy Commission. It has been alleged, and a

1 concern of many people that, if we were to maximize tires to
2 benefit fuel efficiency, there is a potential it could
3 reduce the tread life of tires. We do not believe that
4 necessarily should be the case, but in order to nail this
5 down one way or the other, it is going to take some
6 interesting research to identify the issues involved here.
7 This is an example of where we are coordinating very closely
8 agency to agency to ensure the benefit of energy does not
9 result in a negative problem in increasing, for example,
10 scrap tires. So I wish the information was in the public
11 domain that could answer this question, it does not exist at
12 the present time. We think research is necessary to nail it
13 down.

14 Ms. Kuehl - Okay, thank you very much. Thank you,
15 Madam Chair.

16 Chair Brown - Any other questions? Okay, with
17 that, I think we can entertain a motion if there are no
18 other questions.

19 Ms. Mulé - Oh, I am sorry Madam Chair. On the
20 entire plan?

21 Chair Brown - Yeah --

22 Ms. Mulé - Actually, yeah, I do have just a couple
23 of question here real quick.

24 Chair Brown - Okay.

25 Ms. Mulé - As I stated previously, you know, I

1 would hope that we continue to pursue additional expenditure
2 authority for the grant programs, and that is because there
3 were several programs that have been over-subscribed; as a
4 matter of fact, we are going to be hearing an item in
5 tomorrow's committee meeting, covering that very subject.
6 So I just want to ensure that we pursue additional
7 expenditure authority where appropriate for the grant
8 programs. Mark, do you want to address that?

9 Mr. Leary - Yeah, I would, Member Mulé and I think
10 our thinking is evolving since we have last discussed this
11 issue. With General Fund expenditures continuing to be very
12 problematic for the state, the cash-flow issues described by
13 various, I think, Department of Finance, or whoever did that
14 report, we are concerned, frankly, that the Tire Fund loans
15 that were provided to the General Fund may ultimately not be
16 repaid as quickly as we had hoped, and if we take a fairly
17 conservative look at the state of the fund over the coming
18 years, and if those loans are not repaid, we are going to be
19 in a shrinking situation in terms of the expenditure of
20 their authority, rather than expanding because, at the same
21 time, if we were not paid the General Fund loans, we are
22 also seeing declining revenues as fewer tires are being
23 sold. And, again, if that trend were to continue, then we
24 are concerned that we may actually be having to reduce
25 programmatic efforts in the tire program to maintain a

1 positive fund balance vs. expanding our expenditure
2 authority.

3 Chair Brown - Well, as Member Migden suggested in
4 her earlier comments, it might be something that we need to
5 agendize in June or July, or at some point, to have these
6 level discussions as to how we intend to address the issues
7 of payback of the loans and everything else, declining
8 revenue.

9 Ms. Mulé - Right. I mean, that was going to be my
10 follow-up.

11 Mr. Leary - And we intend to do that.

12 Ms. Mulé - Yeah, I would like to see those
13 numbers, then.

14 Mr. Leary - Okay.

15 Ms. Mulé - If you are indicating that that is the
16 case, I think this Board needs to take a look at those
17 numbers and at its trends.

18 Mr. Leary - Absolutely.

19 Ms. Mulé - Thank you.

20 Chair Brown - Sheila, did you have a question,
21 too? John?

22 Mr. Laird - Well, it is a question that I have at
23 least had private discussions about it, and I know the
24 answer to, but I feel it is worth saying it public, is
25 basically, under the law, because the tire funds were

1 collected through a fee that is for a specific purpose,
2 those are owed back to us legally, in a reasonable amount of
3 time, and there is no fiduciary ability on behalf of the
4 General Fund to keep them forever. Correct?

5 Mr. Leary - Correct.

6 Mr. Laird - Then even though we are going to have
7 this discussion at a later date, I think it is fair to say
8 that, since we went through these all last year on the
9 Legislative side, and I kept asking the question, where were
10 these loans in this situation, as opposed to something that
11 you would not necessary have to pay back, I think, no pun
12 intended, only squeaky wheels will get loans paid back over
13 time. And if we are being polite about this, it sort of
14 guarantees that nothing will happen, not that I expect
15 anything to happen in the next two months give what is going
16 on in the current year, but I just think that is an ongoing
17 fact, that is the reality that we are going to have to deal
18 with.

19 Mr. Leary - And if I may just clarify, I did not
20 mean to say we would not pursue the idea, I just wanted to
21 make the Board aware as a heads up that the situation is
22 changing and we intended to report back to the Board and
23 brief you on the state of the fund balance.

24 Ms. Kuehl - Well, I think one of the reasons that
25 the original structure in the statute for the Board included

1 a couple of legislative appointments, and not that it can
2 help because we are not a majority, but I perceived that it
3 is extremely difficult for an Executive Branch Agency to sue
4 the Governor for things that are owed even legally. I mean,
5 that money should not be kept in the General Fund. And it
6 is just going to get worse because all the friends that I
7 talk to when I am up here indicate that, now, with the
8 propositions appearing to be headed for failure, there is
9 going to be even more scrabbling about in, you know, the
10 budgets of everything, to see what else can be scooped in
11 and borrowed and whatever other names they want to use for
12 it. So I think, you know, the intended payback period is --
13 I believe the vernacular might be "when hell freezes over"
14 and I agree with John that we need to insist that, legally,
15 we must have this money back because otherwise the cost of
16 not doing what we are supposed to do with this money will
17 eventually devolve to the General Fund anyway, in one way or
18 another. I had a question about the web-based grant
19 management system that you reported on in one of the slides,
20 that indicated there is no co-funding available, I think,
21 from the Used Oil Recycling Fund. So what does that mean
22 for that web-based grant management system? Is that a no
23 go?

24 Mr. Levenson - We will still be able to do it, it
25 will just probably take a little longer, have to do a little

1 bit more internal work from our Information Management
2 Branch.

3 Ms. Kuehl - Okay, great. Great, thank you very
4 much.

5 Chair Brown - John.

6 Mr. Laird - In the piling-on category, but I think
7 there is an important point to be made here, to follow-up on
8 Sheila's comments. And that is that, there are these
9 statements that have been made in the discussions that have
10 been in public recently about the Board, about, jeez, the
11 amount it costs for the Board, and here we have this huge
12 deficit, and yet the Board is fee-based, and the very people
13 that have fought and fought and fought for fees to be tied
14 -- the use of money raised from fees to be tied to the
15 subject in which the fee was made, legally prohibits money
16 from the Waste Board to be used for the General Fund on an
17 ongoing or permanent basis. And so there could be no
18 savings that would accrue to the General Fund, and it is
19 such an irony that some of the people that must push for
20 these loans are the ones that fought for the tight fee
21 regulations that say that it only should go for the purpose
22 for which it was collected. And so I just think that gets
23 lost in all this discussion and it would be a nice point to
24 make, that this is a fee-driven agency and that it does not
25 relate to the General Fund in that way, and that, you know,

1 the fee holders, or the fee payers are suffering.

2 Chair Brown - But I was going to mention that you
3 brought up, I believe, the last time we considered this tire
4 fund, and I had indicated to Mark that, you know, we just
5 completed last July a report to the Legislature on how to
6 utilize the surplus funds in this account. And I think that
7 maybe the recommendations need to be included in a
8 transmittal letter, or something to the Legislature that we
9 intend to expend the funds to tackle the remainder of tires
10 that are going into the landfill, and that we have
11 identified the funds that they have rated in order to move
12 those programs, and so that there -- I think your point last
13 time, which I picked up on, was that if we do not look like
14 we are going to spend the funds or need the funds, what is
15 the issue with returning them in a timely manner? So we
16 need to transmit to the Legislature that the surplus funds
17 that they have temporarily borrowed have been identified for
18 programs of which they have been collected for. And we
19 intend to use them. So maybe we can work on that in the
20 finalizing process, some sort of a transmittal from us to
21 the Legislature. Yes, please.

22 Ms. Kuehl - Madam Chair, I move Resolution 2009-
23 70.

24 Mr. Laird - Second.

25 Board Brown - It has been moved by Member Kuehl

1 and seconded by Member Laird. Kristin, can you call the
2 roll?

3 Kristin - Kuehl - Aye; Laird - Aye; Migden - Aye;
4 Mulé - Aye; Brown - Aye.

5 Chair Brown - The motion passes. Thank you all
6 very much. As indicated earlier, we are going to take a 30-
7 minute break, come back, and sit down there so we can have a
8 discussion and take up our last item. So thank you.

9 [Break.]

10 **Item E. Discussion Of Information Related To Staff And**
11 **Stakeholder Analysis Of Issues Regarding Long-Term**
12 **Postclosure Maintenance, Corrective Action And Financial**
13 **Assurances At Landfills**

14 Chair Brown - We are going to go ahead and start.
15 I think we all know that this is going to be a testy
16 discussion, an opportunity to continue the dialogue on 2296.
17 Just to set the stage, we do have a PowerPoint presentation
18 that the staff has prepared for this discussion based on the
19 questions that we expressed interest in getting more
20 information from, from the dais last April. So the
21 PowerPoint really just addresses our questions and concerns
22 in order to begin a dialogue. And although we have changed
23 our format a little bit to try and ask questions as the
24 issues come up, I think that maybe if we -- if I steal from
25 Sheila's comment -- look at this more holistically, we get

1 through the entire to the end of the options, and then go
2 back and maybe we can prioritize which of these 10 questions
3 we have specific questions on, depending on direction and
4 stakeholder input. So it is designed to be much more
5 relaxed, free-flowing. We want to have a dialogue. We want
6 to ask questions, so I am going to actually have Mark
7 facilitate the meeting so we can all have a discussion
8 together. Bill and Ted are going to do the presentation,
9 and then we will launch right in to questions, input,
10 feedback from there. Okay?

11 Mr. Leary - Madam Chair, if I might, I would like
12 to echo your comments about creating a relaxed setting and,
13 actually, given the size of the this group, I am not sure if
14 facilitation is really going to be all that necessary. We
15 have -- it seems like we have got a mike for everybody,
16 there will not be a need to recognize people, so maybe this
17 will go relatively smoothly. Now that Kent is here, things
18 can go forward.

19 Chair Brown - Mechanics, though, I will mention
20 for the record Member Migden, we do need to note that Member
21 Migden is not available. She had a prior commitment, but
22 all of the members are here. And for the Court Reporter,
23 when you speak, you need to identify yourself for the
24 record. So just your name every time you speak.

25 Mr. Leary - And also for broadcast purposes. We

1 are being broadcast. This discussion will be broadcast and
2 can be heard anywhere, so you will need to identify yourself
3 not only for the Court Reporter, but for broadcast purpose
4 each time you speak. And you have to physically turn the
5 mikes on, but do not leave the mike on and say a
6 condescending thing about Board staff, or else everyone will
7 hear it, not that that would happen, not that there would be
8 any reason to. It is just an audio. Eye rolls are not
9 captured. Anyway, hand gestures will not be captured
10 either. So anyway, as Margo suggested, we have a PowerPoint
11 presentation. It is hearty, it is lengthy, but it is not
12 intended to go as a monologue. Feel free to interact with
13 the presenter, and Board members to ask questions, this is,
14 again, intended to be a workshop. We hope it is productive.
15 We are ultimately looking to get, as Margo suggested, to the
16 end slides, which offer some scenarios that maybe start to
17 suggest ideas for solutions and resolution of some of the
18 financial assurance mechanisms. So anyway, I will turn it
19 over to Ted and Bill and we will get started.

20 Mr. Rauh - I am Ted Rauh, Waste Mitigation
21 Compliance Program, said in reverse, and as part of Ted and
22 Bill's Excellent Adventure, I am going to be very short and
23 say, here is Bill.

24 Mr. Orr - Thanks, Ted. For the record, I am Bill
25 Orr, Division Chief of Clean-Up, Closure, and Financial

1 Assurances Division. As Mark indicated, there were 10
2 slides, or 10 questions that were called from the questions
3 that the Board members had last month, and in the interest
4 of time, I am not going to go and review each one of them,
5 but I will go into them as we get to each topic.

6 The first question was, actually, what is the
7 impact of establishing a rolling 30X level of financial
8 assurance on the current landfill operators? And a couple
9 of things are probably important to set the stage. First of
10 all, just as a quick reminder, there are about 1,700
11 landfills or disposal sites around the state, many of them
12 -- most of them -- closed prior to January 1st of 1988, the
13 rest of them, 282, are subject to closure planning
14 requirements and financial assurances, and that is really
15 the focus of today's discussion is that 282 number out of
16 that greater 1,700.

17 In regard to the requirements on landfills, one of
18 the things that we have heard a lot about it is how long
19 does the postclosure maintenance period last. And there are
20 two ways of closing at it, one is legally, and the other way
21 is technically. So starting off with the legal approach,
22 under federal law, it is a 30-year postclosure maintenance
23 period, but it can be shortened or lengthened. And for it
24 to go longer, there needs to be a finding by the director of
25 that state that it should be longer. However, in

1 California, under state law, the burden of proof is
2 reversed; it is actually the burden of proof is on the
3 operator to prove that postclosure maintenance can end, not
4 that it should be extended. And so some of the comments you
5 hear about the postclosure maintenance period being 30
6 years, that is a minimum. But basically it continues until
7 the waste no longer poses a threat. And there are currently
8 general requirements, or general provisions in the
9 regulations that describe how one is released from the
10 postclosure maintenance period. But there is not a specific
11 protocol. From a technical perspective, we have done a lot
12 of research on postclosure maintenance during the course of
13 the last couple of years. We have looked at what has gone
14 on around the state, and so far, really, no landfills have
15 been released from postclosure maintenance within the state
16 of California. We have also done a poll of all 50 states,
17 and only a couple of landfills throughout the country have
18 been released from postclosure maintenance so far under the
19 federal regulations. We started a postclosure maintenance
20 survey to try to get a feel for the trends, are costs going
21 up or down? And we really did not get enough data to make
22 it worthwhile, so we discontinued that effort. We became
23 aware of a couple of groups, the Interstate Technology and
24 Regulatory Council, or ITRC, and the Environmental Research
25 and Education Foundation that have developed a methodology

1 or a protocol, that we believe has promise. But it is not
2 yet geared to meet California requirements. So actually
3 last week we received word that a contract with Cal Poly,
4 that the Board approved earlier this year, was approved by
5 the Department of General Services, and work will commence
6 on that in June. And one of their activities that is
7 required under that contract is to take a look at this ITRC
8 methodology, to look at customizing it for California
9 requirements. We still have 12 years left to figure out
10 when postclosure maintenance might end under California law,
11 and these efforts will be concluded well in advance of that.

12 Now, what do postclosure maintenance -- what does
13 it actually cost? There are a number of small landfills, a
14 lot of small rural landfills, and the average cost for
15 maintaining a small landfill less than half a megaton in
16 place, is \$50,000. On the other extreme, the larger
17 landfills cost over a million dollars a year to maintain.

18 Now in terms of getting to the impact of what does
19 it cost, there is really two ways to look at it. Some
20 financial assurance mechanisms require that you actually set
21 aside cash, and others do not require that you set aside
22 cash. So when looking at how much it costs -- what would
23 the impact of a 30X level be, you need to look at for the
24 non-cash mechanism, there is an incremental difference in
25 the fee that is in the order of half a percent to one and a

1 half percent of the face value of that mechanism, so if it
2 is twice as much, the fee for that is going to be twice as
3 much and on an ongoing basis. For other mechanisms, for
4 example, the pledge of revenue, the main cost there would be
5 the duration of the revenue stream's availability. Now, for
6 the cash mechanism, again, there is an incremental cost in
7 terms of the differential between whatever the Board would
8 adopt and what the current financial assurance levels are,
9 and I will get into that in more detail. But probably the
10 most important cost from the standpoint of the operators is
11 lost opportunity cost, essentially the value of the money to
12 do other things. Now, you know how I love -- go ahead,
13 Larry.

14 Mr. Sweetser - Larry Sweetser on behalf of the
15 Rural Counties Environmental Services, Joint Powers
16 Authority. I would like to add one other point to that, one
17 we talked about with some of the other public sector folks.
18 But on the Pledge of Revenue, there is another hidden cost
19 that I did not see depicted in the slide, and that is, when
20 you do a Pledge of Revenue, or some of the other mechanisms,
21 you are setting aside an obligation to pay in the future.
22 So that obligation is held on the jurisdiction's credit
23 rating, so when they go through additional financing, they
24 have to disclose that as an obligation. So that 30-year
25 number would be a lot higher under that scenario.

1 Mr. Orr - Okay, fair enough. You know how I like
2 charts. This chart, I will not go into detail, but what we
3 have done here is we have looked at all of the landfills in
4 the state, whether they are using a non-cash mechanism or a
5 cash mechanism, whether they are currently operating,
6 whether they are in the process of closing, or whether they
7 are in the postclosure maintenance period. The long and
8 short of it is that everyone that is operating is either at
9 30X, or building their way to 30X if they are using a cash
10 mechanism; everyone that is in the closure phase should be
11 at 30X, whether or not they are using a cash mechanism, or a
12 non-cash mechanism. And then, depending on whether they use
13 a cash mechanism, or a non-cash mechanism, where are they in
14 postclosure maintenance? And that is what I want to hone in
15 on in the next slide.

16 There are currently 20 landfills that are using
17 cash mechanisms that are certified closed. Five of those
18 are trust funds, 10 of those are enterprise funds by local
19 governments, four of them are insurance policies, and one of
20 them is a Certificate of Deposit, which is a small -- the
21 very first landfill to close prior to Sub-Title D and that
22 is a cash mechanism that was approved by the state. It also
23 includes seven of those 18 single private landfills
24 previously indicated that are of particular concern to staff
25 in terms of their ongoing ability to provide for financial

1 assurance over the long term. Now, moving to the next
2 slide, well, actually it is on this slide, you will also
3 notice that 15 of those 20, the bar that is on the left-hand
4 side there, 15 of the 20 cash mechanism landfills are still
5 at 30X. So from the standpoint of a direct impact, there
6 would be no direct impact on those, they would essentially
7 need to find another source of revenue to pay for the
8 maintenance of that mechanism, but they would not have to do
9 anything to up the mechanism.

10 Looking at the next slide, we looked at the cost
11 estimates for these 20 landfills, we adjusted them for
12 inflation since those landfills closed, we compared the
13 current cost estimate to the amount that we have on file for
14 the demonstration, and what our records show is that only
15 six of the 20 cash mechanisms have ever received any
16 disbursements from their mechanism. And returning to a 30X
17 would similarly impact only six of those 30 landfills with
18 cash mechanisms, and cost a total for all six of those of an
19 estimated \$2.3 million, of which one of those landfills
20 accounts for most of that amount.

21 Mr. Leary - Bill, pause. Go ahead, Glenn.

22 Mr. Acosta - Madam Chair, I am Glenn Acosta, with
23 L.A. County Sanitation Districts. I believe that \$2.3
24 million is not an accurate estimate. For one of our
25 landfills that is closed, Vondra, bringing that landfill's

1 postclosure funding back to 30X is on the order of \$7
2 million or more. So I think we need to re-visit those
3 numbers.

4 Mr. Leary - Rachel?

5 Ms. Oster - Similarly to what Glenn said, I just
6 want to give -- oh, I am sorry -- this is Rachel Oster with
7 Recology, formerly Norcal Waste Systems. Similar to what
8 Glenn said, we also have a site that is in closure right
9 now, and has received reimbursement. And right now, just to
10 fund back up to the 30 years, it would be \$2 million. So...

11 Mr. Orr - Just to go there for a second, the
12 records that we reviewed in pulling this information
13 together would suggest that Spadra has received in
14 disbursements \$8.6 million since it closed and, according to
15 our records, is still at the 30X level, even with those
16 disbursements, and so it is currently fully funded. And in
17 regard to the landfill that Rachel is mentioning, our
18 records show that there have been \$400,000 in disbursements
19 from the trust fund for that landfill, and it would be about
20 \$1.6 million to bring it back up to the required level, so
21 it is on the order of the same amount that she is
22 describing.

23 Mr. Leary - Continue. Go ahead, Tim.

24 Mr. Gage - Tim Gage with Blue Sky Consulting
25 Group. You know, it occurs to me that maybe another

1 dimension of looking at the impact of a rolling 30X level
2 would be looking ahead to what expectations operators have
3 had with respect to when they would be able to receive
4 disbursements, and how the rolling 30X approach would affect
5 that, as well as the need to fill it up at this point, to
6 that 30X level.

7 Mr. Orr - Okay. Well, I have talked a little bit
8 about the different financial assurance mechanisms. We can
9 come back to this slide if you want more detail, but I think
10 we can move on. The thing that I do want to focus here, and
11 that was actually a good transition, is that most of the
12 financial assurance mechanisms require that 100 percent of
13 the amount that is assured be covered throughout operation
14 closure and postclosure maintenance. And in order to do
15 that, they pay a fee or a premium to a third party, or they
16 identify a revenue source in the case of a pledge of
17 revenue, or they make a promise that essentially they will
18 be there for the long-term. Now, how is a trust fund
19 different from that, or an enterprise fund? One is that you
20 build it up over time, instead of having it at 100 percent
21 of the level, and our records show that about 78 landfills,
22 not all of them carrying cash mechanisms, have actually
23 prematurely closed. So they may not be fully funded when
24 they stop accepting waste, and so that can present a
25 challenge. We have also heard testimony that a trust fund

1 or an enterprise fund represents the gold standard, and that
2 is true if that mechanism is fully funded. But it is really
3 only as good as the level of assurance that is provided. So
4 if it is either not yet fully funded, or it has been
5 partially depleted, it really is not any different from the
6 standpoint of the state, as a Letter of Credit, for example,
7 which we could draw on in the case of a default. Now, the
8 other things, and this is the point that I think was just
9 made, is the operator may have other expectations in terms
10 of how that money was going to be used, most notably that
11 they were going to count on that money to use to actually
12 pay for those costs. And that is different than any of the
13 non-cash mechanisms. It was something that the USEPA, in
14 promulgating the Federal Regulations, had to really grapple
15 with, and so a lot of the sort of details of financial
16 assurances is really trying to strike that balance.

17 Now, how can landfill operators that have relied
18 on -- this is moving on to the second question, but focusing
19 in again on the trust funds -- how can a landfill operator
20 that has been using a trust fund, how can they leverage that
21 amount to either maintain that level of assurance and also
22 continue to do the work? And one of the ways is by using
23 the interest in the trust fund and there are differentials
24 between what they would have to pay for postclosure
25 maintenance and what the state would have to pay, using

1 prevailing wages to pay for postclosure maintenance. And in
2 the case of the Spadra example, that might suggest that you
3 could do both, essentially live off of the interest, get
4 disbursements from excess revenue, but then not have to draw
5 it down. But the other options are to actually use a
6 combination of mechanisms that would provide additional
7 flexibility. So as you chose to draw that down, you could
8 make up the difference with a Letter of Credit, or a Bond,
9 and essentially maintain access. And then the third option
10 that we have looked at to leverage the money, some operators
11 have established their own trust fund and then have actually
12 used that as the source of revenue, and pledged that through
13 a pledge of revenue to the state. And that is what Orange
14 County has opted to do.

15 This is actually one of Glenn Acosta's wonderful
16 graphics, and from the comments that they made on the
17 rulemaking, and I think this sort of illustrates the point
18 that I was just making. If you look at that blue area under
19 the curve, that is what a trust fund might do if you did
20 draw off and use it for other purposes, it would continue to
21 accumulate interest, you may pay for your postclosure
22 maintenance for some extended period of time. In the case
23 of the graph that is shown there, and I am not totally
24 certain that it is to scale, but if you look at it, they
25 would not even have to touch the money as far as make-up

1 something until 33 years into postclosure maintenance is
2 when, according to that curve, it would actually get down to
3 that 30X level. And it is possible that, if they earn a
4 higher interest rate than the state could get on its
5 revenues, that they may be able to do it for a longer period
6 than that. Now, on the other hand, if you were to draw out
7 the monies, and look at the yellow area, that is essentially
8 a representation of the current regulatory Phase II
9 regulatory proposal, if you took out the money early on and
10 used it for something else, or used it for postclosure
11 maintenance, then there would be a differential at that
12 point in time. But again, it just depends on how you manage
13 those monies. Now one of the other --

14 Ms. Oster - Bill, are you going to visit what the
15 operating costs are associated with the closed sites, in
16 terms of using -- since you will not be able to access the
17 principle, what the operating costs are going to be for each
18 year postclosure, for closed sites?

19 Mr. Orr - You mean what are --

20 Ms. Oster -- Right, so I know we have visited the
21 \$2.3 million in terms of getting it back up to the 30 years,
22 but are we going to talk about the operating costs
23 associated with the yearly postclosure maintenance?

24 Mr. Orr - Well, I think that slide that I showed
25 that had sort of the small, medium, and large landfills sort

1 of gives an indication of what that might look like. But
2 that is going to be a site-by-site basis and, then, the cost
3 of maintaining a mechanism would be, you know, that half to
4 one and a half percent, depending on what mechanism you
5 chose. So, I do not know if you have any specific points
6 you wanted to make, but I was not going to get into it in
7 more detail right now.

8 Ms. Oster - Well, the reason I bring it up is
9 because I want to talk about how these overall costs affect
10 the ratepayers. In our situation with the YSDI landfill
11 that I talked about before -- I am sorry, Rachel Oster with
12 Recology -- it would take the \$2 million to refund up to 30
13 years, but we also have the operating costs every year for
14 postclosure maintenance at that time. So we are looking at
15 \$2.9 million for the operating cost, and that is a total of
16 \$4.825 million. And in our case with the YSDI landfill, we
17 have a franchise ending next year, in 2010. So we are going
18 to have a year to get those costs back from the ratepayers,
19 which would equal about 20 percent increase in rates for one
20 year. So I just wanted to make the point that it is not
21 only an operating cost, this will be on the burden of the
22 ratepayers, as well.

23 Mr. Leary - Tim.

24 Mr. Gage - Bill, I wonder if we could go back to
25 the prior slide. I am not sure I understood a comment that

1 you made. I thought what I heard you say is that it would
2 take a fairly significant period of time to get down to 30X
3 level of funding or dollars. But I am not sure I am
4 understanding where that is displayed on the graph because I
5 see -- unless I am misunderstanding the yellow bars reflect
6 a step-down approach.

7 Mr. Orr - That is correct. What I was alluding to
8 is that, if you managed your trust fund where you did not
9 draw the money off, where you only used as much as you
10 needed to actually perform the postclosure maintenance, that
11 your amount might look more like the blue area under the
12 curve, which is in excess of the regulatory proposal that
13 has currently been put out for comment. So the yellow area
14 does not reflect that, but essentially what the blue curve
15 shows is what the time value of money would be if you
16 basically kept it in the fund and just used what you needed.

17 Mr. Gage - So, in effect, I did not identify
18 myself -- Tim Gage with Blue Sky Consulting Group, in effect
19 what you are saying is the blue portion of the graph, and we
20 have moved on to a different slide inadvertently here -- in
21 effect, the blue portion of the slide accommodates the
22 operator's ability to draw down for postclosure maintenance
23 costs for a period of time. And what point in time would it
24 be that they would fall below the 30X?

25 Mr. Orr - Well, based on just my measurement is 33

1 years into postclosure maintenance.

2 Mr. Gage - Got it. And that is based on your best
3 assessment of what those costs, what the anticipation of
4 those costs would be?

5 Mr. Orr - It is based on the operator's best
6 assessment, correct.

7 Mr. Leary - Maybe Glenn would like to offer an
8 explanation, it is his graph.

9 Mr. Acosta - Glenn Acosta with L.A. County
10 Sanitation District. The purpose of providing the graph
11 previously was to point out the fact that, when you put
12 money in a trust fund, it does accumulate interest monies,
13 and if you leave that in the trust fund, it goes well beyond
14 30 years, 43 years and beyond. And if the cost of
15 maintaining the site goes down over time, then that timeline
16 extends out even further. And so putting the monies away is
17 part of a long range planning that the landfill operator
18 does, but if you all of a sudden put into place the proposed
19 regulations, where you now withhold the money, 15 years'
20 worth, then that plan of having the chance to develop other
21 assets over time to pay for a postclosure maintenance of the
22 site, that gets disrupted and so now you have to come up
23 with something else. And in this case, you are only a
24 couple years, or three years away from closure, so you have
25 no time to plan for something else. So the regulations do

1 impact this landfill, in particular, and there is no way of
2 suddenly changing things at the last minute.

3 Mr. Leary - Board member Kuehl.

4 Ms. Kuehl - John is not used to raising his hand.

5 I wanted to ask Glenn, if I might -- this is Sheila Kuehl, a
6 Board member -- what is the initial deposit, or investment?
7 Is that in order to have the interest begin to be generated
8 from which the maintenance is drawn, what is the initial
9 pop? Is it over time and it comes to a point before closure
10 or...

11 Mr. Acosta - For the trust fund, you put in monies
12 as is operating, so you are building up to the postclosure
13 cost estimate. This estimate was based on \$200 million at
14 the time of closure, and so the initial years, because the
15 interest earnings are more than the postclosure estimate,
16 you can live off the interest earnings.

17 Ms. Kuehl - So in the postclosure, in the amount
18 of deposit that is posited here, is that a figure that
19 represents some X of something?

20 Mr. Acosta - Yeah. It is 30 times the annual
21 amount or annual cost of maintaining the site. So for this
22 estimate, it was on the order of \$6.6 million a year, you
23 multiply that X 30, that gives you \$200 million, or
24 thereabouts.

25 Ms. Kuehl - And on your chart, that generated

1 sufficient interest to cover the maintenance costs. And I
2 also wanted to ask Bill, because he indicated that several
3 of the closed landfills were still at 30X, and I am assuming
4 that they had to spend money on maintenance during the time
5 that they were closed.

6 Mr. Acosta - That is correct.

7 Ms. Kuehl - And did they also, then, realize
8 maintenance out of interest, and therefore remained at 30X
9 because it was sufficient to cover maintenance, which is I
10 think what the blue curve shows would be the case in this
11 case?

12 Mr. Orr - I guess based on looking at the
13 landfills, the 20 landfills, I would say only a handful have
14 actually drawn on it to pay for postclosure maintenance,
15 which would include a couple of the trust funds, as well as
16 a couple of the insurance policies where they are relying on
17 the revenue from the insurance policy to pay for the
18 postclosure maintenance. The majority of them must have had
19 another revenue source that they were using to actually pay
20 for the costs because they have not even touched them.

21 Mr. Leary - Glenn, you wanted to offer a -- then
22 Grace.

23 Mr. Acosta - Yeah. The intention of a trust fund
24 is not to live off the interest. The intention of the trust
25 fund is to essentially put in place cash, enough to take you

1 to an extended period of time beyond 30 years to maintain
2 the site, and at the same time to allow you to develop other
3 assets to pay for maintenance beyond that. So it is not
4 like we want to live off the interest, it is just part of
5 the plan, part of the financial plan for that site.

6 Mr. Leary - Grace.

7 Ms. Chan - Madam Chair, Board members, Grace Chan
8 with L.A. County Sanitation Districts. I just wanted to add
9 to that, that part of the financial plan, again, we did not
10 intend to have kind of what you think of as an endowment
11 that would just perpetuate itself forever. To the extent
12 that we have more money in the fund than we think we are
13 going to need, or foresee needing, we would certainly want
14 to be able to use those funds back in other sanitation
15 districts' programs. So that is why the idea of a rolling
16 frozen principle, if you will, is objectionable to us,
17 because these monies have been collected really for actual
18 maintenance activities at the site. And so to freeze them
19 in an endowment type situation really impacts us
20 financially.

21 Ms. Kuehl - I am confused because it looks to me
22 as though this chart means that one could do that.

23 Ms. Chan - It does indicate one could do that up
24 to, you know, the end point of the graph. But, again, that
25 was not our intent, to freeze the bottom yellow bars in

1 place, and never touch those for actual maintenance
2 activities.

3 Ms. Kuehl - Well, just one of the issues -- and
4 then I will -- considering it is supposed to be a give and
5 take, I will take after what you gave. Some of the pushback
6 really kind of relates to, well, "We don't want to be forced
7 to do this." And I have to say, from my point of view, just
8 in terms of my experience, there is always this conflict in
9 regulation between, "Trust us, we are going to do it
10 sufficiently, without you requiring us to have it in the
11 bank," or, "I want to require you to have it in the bank."
12 And it has been the same, I do not care what area we are
13 regulating -- and so I see Tim nodding because he has had
14 experience with this, as I think all of us have. So I guess
15 what we are trying to struggle with is how -- I just know
16 that private, especially, but some county, as well, is going
17 to say, "Don't do this to us." You know, "We don't want you
18 to make us put this much money in the bank." I am certain
19 that we are going to hear it at the end of the table more
20 than once. And it is, you know, too much to ask, or not
21 necessary, or whatever. And I know that my own
22 pronouncement last time that that was something that I was
23 seriously thinking we should look at raised a panic level,
24 you know, at least in half the areas, if not all of them.
25 So I want to really understand, when I look at how this

1 seems to be a possible answer, why it is not a good answer.

2 Mr. Leary - Tim.

3 Mr. Gage - Thanks, Mark. Tim Gage with Blue Sky
4 Consulting Group. If I could beg the indulgence of the
5 Board for just a couple of minutes, we had put together some
6 thoughts that I think might be helpful in terms of kind of
7 thinking generally about the issue. Many of you know me as
8 the former Director of the Department of Finance, and I am
9 here with my colleague, Charles Schwartz, with Blue Sky
10 Consulting Group. He has got a background in environmental
11 risk assessment. And we have been retained by Waste
12 Management and Republic to help folks think through the
13 thicket of financial assurance. And first off, before I
14 make my few comments, I wanted to thank the Board staff for
15 their courtesy in spending some time with us last week. We
16 have come to this issue fairly recently, so I apologize in
17 advance for the stupid things that I am going to say,
18 because we are relative newcomers to the issue. But as we
19 kind of looked at things, we draw a couple of conclusions,
20 the first of which really is, you know, what is the goal
21 here? As I know you, Senator Kuehl, you really put your
22 finger on, I think, the fundamental issue here which is the
23 responsibility of the regulator is to regulate, to basically
24 impose a scheme that is going to provide the assurance that
25 the public and the taxpayers have to have in order to

1 achieve the goal that we have got in mind. But the question
2 from our perspective is how best to achieve that goal of
3 providing financial assurance as it relates to landfill
4 operators, really at minimal cost to both the taxpayers and
5 also ratepayers. How do we design a mechanism so that it is
6 done most effectively? And as we thought about this, we
7 think there are a couple of different things that are
8 important in thinking about that, one is to really
9 distinguish between two major categories of postclosure
10 costs. And if you think about them generally, and the Board
11 staff has touched on these issues in the various pieces of
12 paper and information they have provided you, but I think if
13 you step back and take kind of a more conceptual approach
14 initially, and that is what are the expected costs, mainly
15 postclosure maintenance, and perhaps to a certain extent the
16 corrective actions costs; those are costs that are
17 anticipated, they are relatively predictable, they might be
18 somewhat uneven, but you know you are going to have them.
19 And the second category are those costs that are really
20 highly unpredictable; again, you know you are going to have
21 them, but you do not know who is going to have them,
22 necessarily, or when they are going to occur, and you might
23 not know the magnitude, either. And we think it is useful
24 to think about those two separately, in effect at two
25 buckets because you would treat them differently for

1 purposes of how you would make sure that you got the
2 assurance that you are going to actually have the money at
3 hand to pay for those things, namely that, with respect to
4 expected costs, that is where you would expect to have an
5 operator to have either a revenue stream, or a trust fund of
6 some sort that is going to pay for those costs over time.
7 They are predictable, they are going to draw that down, they
8 are going to either do that from a trust fund or a revenue
9 stream. With respect to the largely unexpected costs, we
10 think differently that, there, it is really an opportunity
11 to use a more efficient mechanism to fund them, namely some
12 kind of a risk or insurance-based approach. And that could
13 take a number of different forms. It could be a pool, it
14 could be some kind of insurance approach. These are pretty
15 straightforward concepts. You all have, I am sure, touched
16 on these. But for us, it was helpful kind of coming at this
17 at first blush to say, you know, what is the way to separate
18 this out? And so, on that basis, we think it makes sense to
19 think about a hybrid mechanism. Now, one other thing that
20 we ran across as we looked at this issue is that we think
21 that divestiture risk -- and I am jumping ahead a little bit
22 as it relates to the staff's presentation -- divestiture
23 risk perhaps ought to be thought of separately, and the
24 reason for that is, at least potentially as we understand
25 it, and this is where we may be getting ourselves into the

1 deep water without having a parachute, if I can mix a
2 metaphor, and that is that, if the divestiture risk can be
3 addressed -- can be taken care of from a regulatory
4 perspective, then perhaps that eliminates in large measure
5 the need to actually provide some financial assurance as a
6 backstop against that. It is our understanding, and again,
7 correct me if I am wrong, that right now the Board does not
8 have the authority to actually stop a transfer of ownership
9 based on financial assurance. They can choose to approve or
10 not approve the financial assurance mechanism, but they
11 cannot actually stop the transfer. So we think it is worth
12 looking at the question of whether or not it would make
13 sense to address that issue from a regulatory perspective
14 because, if you look at -- and I do not think it is in this
15 set of slides -- but if you look at the staff report from
16 earlier in March, one of the slides show that, with respect
17 to the difference between the 30X and the 5X scenarios, the
18 83 percent of the additional costs associated with the 5X
19 scenario, was associated with what was the staff's best
20 estimate of divestiture risk associated with that scenario.
21 That had the effect of driving up that cost under that
22 scenario significantly; but, in fact, if that cost can be
23 addressed separately and differently, then we think that
24 would be a more efficient mechanism to deal with the
25 situation to backstop, ultimately, the ratepayers and the

1 taxpayers against that issue. One last final point and then
2 I will shut up, and that is we had the sense that -- and I
3 think your decision to have a workshop-style approach today
4 is a good reflection of that, that some of the stakeholders
5 were not able to fully get their arms around the ICF model,
6 and really understand the guts of it. It is moderately
7 complicated, it is a bit of a black box. Obviously, we are
8 new to it, so we are particularly ignorant as it relates to
9 the details, but we thought it might be useful. And again,
10 I thank the staff, they offered to provide us an opportunity
11 to sit down with them and better understand how it operates;
12 but in order for us to really assess the best approach here,
13 we think it makes sense to really dig in the details, see
14 what the sensitivities are as it relates to the data that
15 ultimately you use to build the model, and spit out the
16 answers at the other end. So we would ask the Board for
17 that opportunity. Thank you very much.

18 Mr. Leary - Let me see if Bill or Ted want to
19 offer anything in response to Tim's ideas, or do you want to
20 get back to Member Laird who had a question earlier?

21 Mr. Orr - I think we will be covering that in a
22 presentation.

23 Mr. Leary - Sheila, are you finished? Board
24 member Laird, did you get your question answered? Or would
25 you like to ask another question?

1 Mr. Laird - Okay, great. Sheila went -- one of
2 the places I wanted to go, she went. So the question I had
3 about this chart was slightly different, it was that I
4 interpreted at some point in this discussion, and it has
5 sort of been talked about in three different ways, that you
6 got part way into this chart, like that line above the first
7 15, and you were really talking about money that you were
8 afraid you would not have access to now, and that that was
9 what this chart was trying to demonstrate in some way. And
10 earlier, I mean, one of our questions coming out of the last
11 meeting was whether or not there were ways to leverage the
12 money while holding in a way that gave you more value, and
13 then somehow was put away. And I think that was the list of
14 items that you went by in a nano-second and said you sort of
15 understand these, but the question still remains -- do any
16 of those items give any comfort that they might be able to
17 leverage this money both ways going by? That was the
18 question that sort of came out of that Board discussion.

19 Mr. Orr - The short answer is I think they can
20 have their cake and eat it too. They can hit one of the
21 three ways, probably more, and use those to decide how they
22 want to operate their funds. So going back to the -- to go
23 over the choices that they have, they can either for many
24 years, potentially, just utilize the interest if they do not
25 draw it off. And I think one of the things that is

1 important is the distinction between the regulatory effect
2 and the practical effect on these mechanisms. The yellow
3 area that was shown on that slide was the area that, under
4 the current proposal, could be drawn down to. So any of
5 that amount that is above and beyond that would be available
6 to an operator. If we decided to make that a rolling 30X,
7 then that yellow area would be larger, but anything above
8 that would be available for use by the operator without
9 restriction, they would simply request a disbursement from
10 that account. The second option would be for them to use
11 two mechanisms together where they would use part of it as
12 the trust fund money, where they can continue to have access
13 to that money, but then, as they draw that down, they would
14 make up that differential by using another mechanism like a
15 Letter of Credit, so they could combine a cash and a non-
16 cash mechanism that would still maintain their access to the
17 cash, but then also meet their level of assurance. And then
18 the third one would be sort of what I have called the Orange
19 County example, where they essentially had a trust fund that
20 was their trust fund that they had more control over. They
21 set it up for the purposes of operating, closing and
22 maintaining the landfill, but then they used that as their
23 revenue source for a pledge of revenue to the state. So
24 they have a trust fund for their purposes, but they have a
25 pledge of revenue with that revenue pledged behind it as the

1 mechanism that we are provided with.

2 Chair Brown - Well, I was going to say, but as you
3 recommend these things, do you know that these mechanisms
4 are available to the landfill operators? I mean, for some
5 reason --

6 Mr. Orr - Absolutely.

7 Chair Brown - After John speaks, maybe -- is it
8 available in their charter? I mean, I think we view them as
9 available, but are there local city requirements, or county
10 ordinances that prohibit some of these things?

11 Mr. Orr - Well, there are a lot of choices, so it
12 would be up to them to tell -- you know, as far as any of
13 these mechanisms, they are all equal in the eyes of the
14 state.

15 Chair Brown - All --

16 Mr. Orr - Right.

17 Mr. Leary - Grace.

18 Ms. Chan - Grace Chan, L.A. County Sanitation
19 Districts. I think, just for the new Board members, you
20 know, I would like to say, we operate three landfills, three
21 regional landfills, and we maintain one closed site that
22 falls under these regulations. We did trust funds
23 originally, that is kind of how we planned things, even
24 before Subtitle D went in, we had begun to set aside money.
25 I absolutely agree we can leverage the money to provide

1 long-term maintenance care. But what the proposal has done
2 is made it too expensive to do that while it is in a trust
3 fund in the Board's hands. So we have made the decision to
4 take, I do not know, I think we have about \$250 million in a
5 Waste Board trust fund, to pull that back into Sanitation
6 District's account, and look at these other mechanisms. We
7 are still evaluating that, but we expect very soon to be
8 applying to switch mechanisms. So I agree, it is certainly
9 a lot of money, and it can be leveraged, and so that is what
10 we will be doing.

11 Mr. Leary - Larry, you had your hand up.

12 Mr. Sweetser - Larry Sweetser on behalf of the
13 Rural Counties. I always like to look at the real world
14 examples and Bill had mentioned the six sites that had
15 chosen to live off the interest. Did you ask them under
16 what circumstances, or why they chose to do it that way?
17 And given that they are doing it that way, how else are they
18 funding the money?

19 Mr. Orr - No, what I was saying is that there were
20 only six that have had any disbursements out of the 20, and
21 two of them we have already talked about, Spadra and one SDI
22 (phonetic). The other couple of those are insurance, and I
23 do not know about the last two. The other ones, we did not
24 ask, "Well, why haven't you touched your trust fund or your
25 cash mechanism?" But you know, I think one of the things

1 that we see from a staff perspective is that people actually
2 touch their mechanisms, touch their cost estimates a lot
3 less in reality than the regulations provide for. So why
4 they do that, that is their business decision. But from a
5 practical perspective, that is where people are.

6 Mr. Sweetser - So nobody has actually tried this,
7 using interest only?

8 Mr. Orr - Which one?

9 Mr. Sweetser - No, but no site has actually tried
10 using that concept.

11 Mr. Orr - Well, I think that is what we are seeing
12 at Spadra, that would be my guess.

13 Mr. Leary - Go ahead, Kent.

14 Mr. Stoddard - Kent Stoddard on behalf of Waste
15 Management. To maybe further confuse this discussion, we
16 have not commented on the trust fund because we do not use a
17 trust fund, we pay for all of our postclosure care costs out
18 of the operating revenues of the company. We budget them
19 and we pay for them. Our financial assurances are back-up
20 mechanisms, so in the event that Waste Management fails to
21 fulfill their obligations, there is a back-up mechanism that
22 the state will tap to meet those obligations. Our concern
23 about a kind of 30-year in perpetuity, we know over time our
24 costs go down, we know over time we get closer to that point
25 where we are going to be clean and we are going to be

1 finished; but with 30 years in perpetuity, it means at some
2 point we have way more financial assurance back-up mechanism
3 than we need. It might be 29 years more than we need. And
4 the cost of that is significant, and we have a lot better
5 ways that we would like to spend that money in advancing
6 other Board agenda items, organics out in a landfill, and
7 better methane collection, and renewable energy, than to
8 have money locked up in a financial assurance mechanism that
9 really is in excess of what is appropriate for that
10 particular site.

11 Mr. Leary - Sheila.

12 Ms. Kuehl - Now, do not try to bribe us, Kent.

13 "Hey, we can use the money for other things you loan, all
14 right." Well, it sort of brings me to the question, then,
15 and I want to go back maybe to Bill because it was an early
16 comment that you made, and really something you just talked
17 about, Kent, and that is how do we know when we are done.
18 Because what I think you said, Bill, was that the operators
19 have -- the burden is on them to show us that they can stop
20 maintaining the site because it is now safe, now done, now
21 not volatile anymore, no water got in, nothing is happening
22 anymore in the landfill. And there are certain factors, I
23 think you indicated, though that was not the word you used,
24 that have to be kind of a checklist, okay, "Look, we
25 maintained it for this number of years, nothing is happening

1 in there, we did all the testing, we've done all the
2 drilling, we know," you know, "We're done." Is there a
3 mechanism that shows maybe some quietness in the landfill
4 that will lead us to believe that we will be done in X
5 years? Because one of the aspects about step-down, or good
6 behavior, or whatever, had nothing -- and from what I could
7 understand -- to do with the science, and only to do with,
8 "You've done good maintenance all along, and everything
9 seems to be okay now." But is there science on saying,
10 "Okay, we think you're getting close to the ability to
11 close," I mean, not close, but, you know, stop maintaining,
12 because it is not reactive anymore, or it is not going to be
13 reactive, and therefore we would allow more money to be
14 pulled out of that mechanism for maintenance. You could
15 stop finding it other places, or whatever, or you do not
16 have to do it in perpetuity because we have a way to think
17 about it. That part, I do not understand yet.

18 Mr. Leary - Sheila, I think you directed that
19 question to Bill, but I think there are a couple folks over
20 there who would like a chance at it, but I am going to give
21 Bill first shot.

22 Ms. Kuehl - Thank you.

23 Mr. Orr - I think there are two parts, one is how
24 did the cost estimates work, and it gets in part to what
25 Kent's comment was, and also your question. If costs go

1 down over time because less maintenance is required,
2 settlement slows down, you need to monitor things on a less
3 frequent basis, those reductions can happen at any time. So
4 you can reduce your cost estimate today, tomorrow, five
5 years from now, and so your 29 or 30 X of something, that
6 changes over time. So if the costs go down based on your
7 needs to maintain that site, then that 30 X is 30 of a
8 lesser amount than it would have otherwise been. So from
9 the financial standpoint, if the costs go up, the estimates
10 go up, the financial assurance goes up. If the estimates go
11 down, there is less monitoring and maintenance required, the
12 estimates go down proportionately. Now, on the technical
13 side, we have looked into that, we see promise in this ITRC
14 method that I mentioned earlier. We are working through a
15 contractor to make that specific to California, but the
16 thing is that, even the people that developed that, say that
17 you need to use that method for 10 years before you even
18 know where you stand. And so I think the bottom line is
19 that we think we will know it when we see it, but nobody
20 knows yet when that will be. And so I think that this
21 method is not going to say, in 18 years, you are going to be
22 good. It's going to say, if you monitor this landfill for
23 10 years or more, you might start to get an idea of, a)
24 whether the landfill is starting to stabilize, which would
25 mean not necessarily that it has no potential threat

1 anymore, but that it has a reduced threat and may require
2 less maintenance; or whether you are getting to the end
3 where everything is out, there is no need for landfill gas
4 monitoring, there is no need for groundwater monitoring
5 because there is no threat anymore. So I think that tool is
6 something that we are actively looking at, but nobody knows
7 right now when that might be.

8 Mr. Leary - Chuck Helget.

9 Mr. Helget - Well, on that issue, we do believe
10 there are some good indicators that indicate what that time
11 frame is most likely. Can you hit it precisely? Absolutely
12 not, but we can sure get better than 30 years in terms of a
13 good estimate of what that is going to be. And it is going
14 to be gas generation, it is going to be the leachate
15 situation, it is going to how the integrity of that cover is
16 holding up, and those are things that I think the industry
17 does have a lot of experience, and we have a huge incentive
18 to bring that facility to that, you know, benign state as
19 quickly as we can. So we want to have that opportunity and
20 we would like to work with the Board. We have some studies
21 that we have done, as well. We think that we could get more
22 precision in that process than just falling off a cliff at
23 30 years, so we think there is promise there.

24 Chair Brown - It is a performance-based approach
25 where we are looking at performance, which is what we are

1 asking, ironically, the Water Board to look at for compost,
2 operators, is to look at performance as opposed to
3 proscriptive measures at solving problems. And I think, you
4 know, we have heard it a thousand times, so I do not need to
5 say it, but, you know, the ideal is 100 percent compliance
6 and we want operators and facilities and landfills to be
7 compliant with the regulations and the statutes. So if we
8 set up, as Sheila indicates, a performance evaluation where
9 we can look at when things are safe and the operator can
10 demonstrate, it would seem that there is an avenue for
11 determining when it no longer poses a threat.

12 Mr. Rauh - I just wanted to jump in -- Ted Rauh
13 with the Waste Board -- that, as part of our presentations
14 before on standards approaches, we have not envisioned a 30-
15 year drop-off, we have envisioned that, as technical
16 information comes in, and a horizon can be reasonably
17 determined, that we would be able to step down in accordance
18 with that horizon. So it really has not been the thought
19 that you just go 30 years, to the last year, and then
20 suddenly get back a large amount of money.

21 Mr. Leary - John.

22 Mr. Laird - Now I think the comment I was going to
23 make about 15 speakers ago is maybe a little more relevant
24 and Kent brought it out. And the trouble that I am having,
25 and maybe it is as a new Board member, is that we are having

1 this long discussion of mechanisms and I am hearing it is
2 uncomfortable to set aside a certain amount of money that we
3 cannot use, we would prefer to be doing other things. But
4 the bottom line for us is, and it is the hardest thing to
5 quantify, is how do we guarantee that we are not leaving
6 risks that are going to be transferred to taxpayers in the
7 future? That is the bottom line. And so the question is,
8 how do you argue that all these different things address
9 that question of risk? And understand that everybody thinks
10 they are addressing it, but I cannot help but hear we are
11 worried about setting aside a large amount of money, but we
12 want some objective system that somehow determines the risk,
13 and yet if the objective system is wrong, the risk
14 transfers. And I think it might have been helpful to begin
15 this meeting with sort of a restatement of where we left off
16 at the last one because I think that was part of it. And
17 some of the questions were related to that in the allowance
18 to use money, or the question if we were vetting all this
19 against the rolling 30-year, who does that knock into some
20 kind of default that would not be in default another way
21 that leads back as a risk to going to that mechanism so that
22 we are sitting there talking about those specific kinds of
23 things. And no matter how we talk about the finest system
24 for making sure it is sound, and it is not burping, and
25 therefore you can walk away from it, and all these other

1 things, I am just going to want to know that we are not
2 transferring risk to the taxpayers off in the future. And
3 that is the thing I am trying to figure out how to assess in
4 all this.

5 Mr. Leary - Kent.

6 Mr. Stoddard - Mr. Laird, you are exactly spot on.
7 And when this process started, we envisioned a back-up state
8 insurance or trust fund as an absolute necessity. It was
9 hard to envision how this would work so that you could have
10 an efficient use of public and private money, planning for
11 what is reasonably foreseeable, but not assuming a worst
12 case in every situation, that it needed that mechanism. I
13 mean, if we all lived in homes that our insurance companies
14 said, "We are going to assume that it's going to burn down,"
15 every one of them, none of us could afford to own a home.
16 So we do need some kind of insurance mechanism that is going
17 to backstop for those unlikely, but potentially expensive
18 corrective action items over time. And we as an industry, I
19 would say, we are perfectly prepared to pay for that.

20 Mr. Laird - Well, you see, just to have a dialogue
21 for a second, I think the hardest thing, and the thing that
22 got mentioned in the last meeting, is somebody that was sort
23 of heading up the City when it was hit by a 7.1 earthquake,
24 and we lost 60 percent of our downtown, and suddenly our
25 landfill was taking things we never thought it would ever

1 take in our lifetime; yes, those cataclysmic events occur,
2 although Bill went out of his way to tell me he inspected
3 our landfill two days later, and it was fine. And
4 similarly, when I hear the breadth of your company and how
5 it can back things up, we just lived through some amazing
6 things in the last five or six months that we never thought
7 would go on during its -- so the question is, yeah, I know
8 that setting aside a big thing for those incredible
9 eventualities might not make sense, but how can we talk
10 about some level of assurance that might survive some
11 difficult situations? And that is the kind of discussion
12 that we were hoping to have.

13 Mr. Leary - Chuck, did you want to offer some --

14 Mr. Helget - Yes, please. I think -- I am trying
15 to put in a little bit of perspective, sort of listening to
16 some of the newer Board members' comments, and Board member
17 Kuehl, you said -- I am paraphrasing -- you are little bit
18 tired of hearing this too much, you are asking too much, and
19 it is too much money, and that kind of response from us --

20 Ms. Kuehl - No, it was really more about we prefer
21 it to be voluntary than to be told what to have to do. That
22 is what I was -- I did not say I was tired of it, but it was
23 very familiar to me.

24 Mr. Helget - Familiar to you. I was taking a
25 little bit of liberty with your comments. I will not do

1 that anymore. But from the perspective that -- I guess I
2 would ask the new Board members to think back a little bit,
3 is we have gone through about a year, a year and a half of
4 extensive workshops on these topics, where a lot of
5 discussion occurred and we have gone through hours and hours
6 of talking about divestiture and other things like that, and
7 the sort of the package that came out of that was 15X made
8 sense, made good sense with a step-down and maybe a step-up,
9 and there was a process that we sort of got some mix of
10 agreement on, and particularly with Board staff, and then
11 all of a sudden the discussion went to 30X. And I guess I
12 would ask the new Board members to stop for a second and I
13 would like to understand a little bit again of why 15X was
14 all of a sudden just cast aside, when that is sort of where
15 we landed after a long lengthy process. And I am not saying
16 it is necessarily the best solution, but it was a solution
17 that came out of that process where we talked about a
18 variety, an incredible variety -- and this is a very complex
19 topic, and you are both smarter than I by a long stretch,
20 but people are asking you to kind of catch up on this in
21 about a month's period of time, and it is a really difficult
22 process to get there. And I think that one of the things
23 now, from the perspective of other public services like
24 Waste Management, we pay for our closure costs, the
25 facilities we have closed, and we are paying for those out-

1 of-pocket right now. All of our instruments, almost all of
2 our instruments, are non-cash instruments -- surety bonds,
3 letters of credit, those types of things, but it is a
4 mixture of all of those, roughly \$400 million of instruments
5 in place in the state. And so it is not small money, it is
6 a major commitment of resources to keep those resources in
7 place. I am trying now to tie this back a little bit for
8 you after this rambling, and I am still looking at Board
9 staff yesterday and asking them, what really does 30X mean?
10 I am not exactly sure I understand what that means so that I
11 can go back to my employer, and we can go back to insurance
12 companies or surety bond companies and say, "What really is
13 this going to cost us?" How much in today's cost, because
14 it is different? We can look back and say we have got
15 roughly \$400 million of cost on a given facility, and when
16 we get into postclosure today, we might be able to draw down
17 on that a little bit, but with a rolling 30X, I assume we
18 cannot. So that is real money that is going to stay, that
19 we are going to have to continue to commit. But then, to
20 keep that \$400 million in place, what do we pay today to do
21 that? And how much more additional cost will 30X be over
22 15X, or even over the current system we have today? And I
23 still have not gotten a good answer of how that 30X is going
24 to work. Does that really entail in perpetuity? And if it
25 does, the ICF Report talks about that. Surety bond

1 companies are really nervous about that. And so those are
2 still questions I have after going through this process.
3 And I think it would be helpful, getting back to one of the
4 earlier suggestions, and I think Board member Laird made a
5 point about can we look at just a couple individual
6 facilities, and I think it would be useful. These are the
7 instruments they have in place, this is kind of the range of
8 things we have in place, now let us sit down and figure out
9 what additional costs would be entailed, and let us go talk
10 to the insurance companies and the surety bond companies
11 that provide the backing for these instruments and get a
12 sense of what those costs would be.

13 Mr. Leary - Margo.

14 Chair Brown - We may still go there. I think we
15 left the door open to be able to do that. I think we
16 clearly stated at the last meeting that our intention was to
17 try and stick with the July 1st deadline, but if there were
18 questions and issues still remaining, we certainly
19 understood and were sensitive to the need to go out and
20 ensure that, you know, there was good information behind any
21 decision. But I will say one thing that you said, and this
22 is because I do not fully understand -- I have not funded
23 PCM or corrective action -- that the cost -- and this is
24 clarification for me, and maybe for other Board members who
25 do not know because Rosalie explained it to me -- 30X, to

1 me, was this straight line out; you are now saying that, as
2 the cost of maintaining goes down, their 30X would go down,
3 but they have to come to the Board, and the Board has to
4 agree, and that is in our current regulatory structure? Or
5 does that automatically happen?

6 Mr. Orr - It happens at a staff activity level, it
7 is not something that has to come before the Board. They
8 update, it is delegated to me to approve either
9 disbursements from the mechanisms, or changes to the cost
10 estimates, or approval of a closure or postclosure
11 maintenance plan. So all of those things come to staff and
12 they are routinely adjusted.

13 Chair Brown - Well, I think what is unclear to me,
14 Bill, and maybe it gets to Chuck's question, I think what I
15 was trying to understand in asking the question, what does
16 30X mean, was what are the costs associated to a company if
17 we were to go from 15, with a step-down, all the way to 30?
18 Because it was a huge shock and I think when we were looking
19 at this, and there was clear discussion in September because
20 I remember having the discussion with Member Peace
21 (phonetic), the discussion with 15 was because of the pooled
22 fund, and I think that the discussion now, in my mind,
23 entertaining 30X is because there is not a pooled fund in
24 place. We do not have the assurance that the Legislature
25 will create the pooled fund. So absent a pooled fund, are

1 we demonstrating what we need to -- or that we are required
2 to in 2296? So that was a question that sort of engendered
3 some of this, in my mind last month.

4 Mr. Leary - Rosalie.

5 Ms. Mulé - As did mine. That was my question, is
6 when we were having this discussion last month, is what
7 would that financial impact be by going from 15 to 30X. And
8 as Margo also stated, you know, at the time when we were
9 having the discussion last year, we were discussing this in
10 the context of having some type of a pooled fund in place.
11 So I just, you know, again, things are changing and that is
12 why we are having the discussion we are today, because we
13 are not where we were even eight, nine months ago. So
14 thanks, Mark.

15 Mr. Helget - Just one real quick comment on that,
16 too, is the pooled fund certainly is a factor there, but so
17 is this whole issue of divestiture, dealing with
18 divestiture. Divestiture is a big, big, big part of the
19 risk. And taking divestiture off the table, which is
20 something I think that is not an overly ambitious goal,
21 reduces that risk significantly -- \$900 million, I am
22 looking at Tim for help here, but I think it is \$900
23 million. That is a lot of money over a span of time.

24 Chair Brown - Well, I agree. I mean, personally,
25 I agree. I think Tim raised an excellent point. We kind of

1 touched on the fact that divestiture is a separate issue,
2 apart from this. And that was mentioned in the discussion
3 last month, that we needed to deal with divestiture separate
4 and apart, and that may be a Phase III -- not that we have
5 the wherewithal to go to a Phase III, but maybe, you know,
6 the question arises, do we deal with divestiture separately,
7 or do we sort of get the cake batter made, and don't put it
8 in the oven until we have the second layer ready to bake the
9 whole baked cake at once.

10 Mr. Leary - Sheila, did you -- Tim will still have
11 an opportunity to speak, but I always go to the Board member
12 first. I am dumb, but I am not stupid.

13 Ms. Kuehl - Well, I guess two points out of what
14 just came up, the first really to Chuck and that is, first
15 of all, you know, I apologize that there were openings on
16 the Board and they were filled by different people, but they
17 were. So my job, as I see it, is to understand best what I
18 can about the risk to the state, and within the realm of the
19 possible, which is why we have these conversations, to
20 allocate the most appropriate amount of risk where it should
21 rest. And although the service done to the state by the
22 collection and disposal of waste is significant, it is a
23 profit-making business, and so the decision was made to
24 allocate most of the risk to the operators. In terms of the
25 15 and 30, I was under the impression that the federal

1 government had indicated that they thought that 30 years was
2 an appropriate number to look at. And I thought all we were
3 looking at in terms of 30X was 30 years worth of
4 maintenance, where X was maintenance. We were not talking
5 about anything -- corrective action, we were not talking
6 about anything -- big blow-ups, etc., X is maintenance.
7 That is the reason why X would go down in the 30X formula,
8 because if the cost of maintenance was less because it had
9 been well-maintained, then 30 X the current cost of
10 maintenance would be less than 30 X the initial cost of
11 maintenance, potentially. So that is why I personally still
12 think 30 is the appropriate number, but 30 X what? And how
13 proven? At what point? And for how long, really, at that
14 rate? The second thing is in questions about divestiture.
15 I want to understand exactly why it is specifically that the
16 issue of divestiture raises the risk in terms of our wanting
17 more money available because of the idea of divestiture. As
18 I understand divestiture, it is a transfer of ownership, not
19 renting, but selling -- transfer of ownership. And the risk
20 involved in that transfer of ownership is that, so far,
21 there is no mechanism by which the new owner must assume
22 that risk, and therefore post some financial assurance. Is
23 that correct? Or they do have to?

24 Mr. Orr - They would be required under the current
25 regulations, current law, to meet whatever the level of

1 assurance that is required by the previous owner or
2 operator. So that is where, just simply saying you need to
3 have a higher level, it is a higher level compared to what?
4 So if you are just saying you need to continue it, I think
5 our concern is that, if you drop down too low, that someone
6 may be buying the landfill that does not have the technical
7 and financial wherewithal does not fully appreciate what
8 they are in for in maintaining a landfill, and then run into
9 problems.

10 Ms. Kuehl - So we may have dropped a level because
11 of good maintenance, maybe sold, the new owners may not be
12 able to as easily maintain at that level, and therefore
13 their financial assurance is inadequate?

14 Mr. Orr - That is correct. If you let it go down
15 too low.

16 Ms. Kuehl - And that is what raises the risk in
17 the assessment --

18 Mr. Orr - Yes.

19 Ms. Kuehl - -- because, you know, we are hearing a
20 lot of numbers thrown around about how, you know, 70 percent
21 of all the risk is about divestiture, and I do not
22 understand how that is the case. I know Tim is just dying
23 to tell me.

24 Mr. Leary - Tim's turn.

25 Mr. Gage - Thank you. Two issues, one to go back

1 to your issue of divestiture; it really goes -- you
2 described it right, I think. It goes to the issue of what
3 number the staff has included in the model, as what needs to
4 be in effect protected against because they made an
5 assumption, as Bill described, they have made an assumption
6 that if the level of financial assurance falls to a certain
7 level, then, in effect, some new operators might have an
8 incentive to just walk away. And as a consequence, this
9 transfer of ownership creates this risk that the number has
10 assigned a number to, in terms of the potential cost. And
11 that is what tends to drive up the cost overall. And it is
12 a matter of kind of teasing that apart and understanding,
13 okay, do we think, in fact, that would happen? And I think
14 that is a reasonable assumption on the part of the staff
15 that you create, in effect, an incentive for some new
16 operators to simply walk away, and then have we assessed the
17 potential financial exposure associated with that correctly?
18 And I think there, again, that may be true. But the
19 question we are raising, in effect, is, is there a way to
20 short-circuit that? Because while the new operator has to
21 provide the financial assurance, you as the Board cannot
22 stop the sale if you have a concern that, in fact, "Oh, you
23 know, they're not really going to be there." And, in fact,
24 before the financial insurance is in place, they will walk
25 away. And so is it possible to short-circuit that risk so

1 that each and every operator does not have to -- you do not
2 have to assume for each and every operator, in effect, that
3 that is potentially what is going to happen.

4 Ms. Kuehl - So that is a change of statute?

5 Mr. Gage - Yeah, I assume it would be a change of
6 statute.

7 Ms. Kuehl - With everybody around the table
8 opposing, no doubt, I mean they do not want to be foreclosed
9 from selling.

10 Mr. Stoddard - Kent Stoddard on behalf of Waste
11 Management. We are actually working with Assembly Member
12 Portofino (phonetic) on exactly this Bill.

13 Ms. Kuehl - To allow sale and to require --

14 Mr. Stoddard - To prohibit the sale from being
15 finalized until the new buyer is, in essence, pre-qualified
16 by the Waste Board. They are capable of meeting all the
17 financial assurance requirements and, frankly, whatever
18 other bells and whistles the Board thinks appropriate to
19 protect their interests and our interest, we think that is
20 very appropriate.

21 Mr. Gage - We are supporting that Bill, as well.

22 Ms. Kuehl - I knew that.

23 Mr. Leary - Mr. Cupps.

24 Mr. Cupps - John Cupps, consultant to the
25 Sanitation District. Just a follow-up on Kent's point and to

1 elaborate a little bit on what Tim was saying. If I
2 understand the Board staff assumptions correctly, the
3 assumption in terms of the legal of risk for divestitures,
4 you assumed a failure rate of a divestiture scenario of -- I
5 believe it was 12 percent, which was in effect the failure
6 rate for small start-up companies. Is that a correct
7 characterization of the staff assumption?

8 Mr. Orr - That is a correct assessment of the
9 staff assumption, that for the purposes of divestiture
10 defaults, defaults resulting from divestiture, that we would
11 utilize -- well, what we have been utilizing in our analysis
12 is a 12 percent default rate. And that is why there is a
13 higher amount, because the default rate is much higher.

14 Mr. Cupps - And that, of course, is what that 12
15 percent default assumption is what drives the total
16 liability numbers. Now, just hypothetically, let us assume
17 this Bill -- I cannot even pronounce the author's name --
18 but that the Bill is in fact enacted into statute, and this
19 Board actually had some authority to review that transfer; I
20 suspect this Board would not approve the transfer of a
21 facility to an operator that was, in effect, a start-up
22 company. You would look at that and say, "No way!" And
23 that is why I think that, while it may be a valid
24 assumption, given the lack of statutory authority, in the
25 real world, assuming you have statutory authority, I do not

1 think that 12 percent is necessarily a very realistic
2 assumption.

3 Ms. Kuehl - But might it not be the case that the
4 company would have a track record in their business, but not
5 in waste management? I mean, so --

6 Chair Brown - But if is a start-up with the
7 capital behind it, we would have to. I mean, if they can
8 demonstrate their financial capabilities.

9 Mr. Cupps - Well, if they have substantial
10 capital, even if they do not have the experience, but risk
11 is probably --

12 Ms. Kuehl - But wasn't the risk also assessed on
13 a 15X?

14 Mr. Orr - No, it was not. Actually, what we have
15 been saying -- and I have got the chart up here on the
16 screen right now --

17 Ms. Kuehl - I am sorry, I cannot see that far.

18 Mr. Orr - Anyway, what we have been saying is that
19 it becomes problematic at 15X. So above that, you have
20 already taken care of our concerns regarding defaults that
21 result from divestiture. So the only thing I was going to
22 say, and maybe seek clarification from Kent on this, is that
23 there is -- yeah, well, just the working of that transfer
24 language in a statute would depend on what the criteria
25 would be used. So if you have got a 15X or higher,

1 according to staff analysis, the divestiture issue would be
2 already addressed. And so, you know, that would be the
3 criteria that staff would use in reviewing financial
4 assurance mechanisms. So if you are going to deal with it
5 that way, that would be how staff would look at it currently
6 under our program.

7 Mr. Laird - But deep down -- John Laird -- there
8 is a balance that would be embodied in that legislation
9 which is -- I have assumed that the reason you guys feel
10 pretty good about it is, you are going to not have liability
11 and it is going to rest more with us to determine who it is
12 being sold to has the financial wherewithal to deal with it
13 and to approve a transfer. And if there was not such a
14 mechanism and you were just selling it, and the person
15 defaulted, it might come back on you a little bit; it sort
16 of relieves that. And so the question is in that balance in
17 enacting that statute, that you make sure you do protect
18 your interest in that, but how do you give us the
19 appropriate tools to protect ours so that everybody comes
20 away in a way that nobody loses?

21 Mr. Stoddard - I guess I would say -- Kent
22 Stoddard -- I would reply we already pursue our self-
23 interest in terms of a sale to another party, and in part
24 because of some continuing liabilities we have under Water
25 Board statutes and regulations, and the fact that we are

1 always going to be a deep pocket. We came at this from
2 really the standpoint that we assume it is going to be
3 relatively rare that closed landfills now trade hands, they
4 are sold to a different party. I think we all know enough
5 about landfills and the chances of an unsuspecting party
6 purchasing a landfill has gone down a lot; however, to seal
7 that up, we are very amenable to legislation that puts the
8 Board in the middle of that process to protect the public
9 interest. So that is our motivation. And at the same time,
10 remove from the equation what now is being scored as a very
11 potential large liability to the state.

12 Mr. Leary - Let me, okay, go ahead, Tim.

13 Mr. Gage - Sorry. I wanted to go back to my
14 second issue before we talk more about divestiture, and that
15 really went to the broader question I think all of you are
16 raising, which is what is what does this 30X mean, what is
17 included in this, what are the risks that we are trying to
18 protect against as it relates to the 30X? Because I think
19 that is absolutely the right question. And to go back to my
20 earlier comments, I think it is helpful to think about
21 should that 30X figure include risks that are going to exist
22 as it relates to each and every operator. And the answer in
23 our view is absolutely. And as much as it is needed, and
24 you get to tell them, "Yep, you put the money up because we
25 want to make sure that the taxpayers are protected," but

1 then, as it relates to risks that are intermittent, rare,
2 catastrophic, however you want to describe the ones where it
3 does not make sense for each and every operator to put up
4 the entire amount of what it would cost, in effect, to
5 indemnify themselves against that risk, but where, instead,
6 because they are intermittent in nature, it lends itself
7 exactly to some kind of a risk pool approach. And so the
8 question, from my perspective is, is the 30X intended to
9 include that second category of risks, as well, in which
10 case, then I think what you are doing is operating
11 inefficiently in the sense that you are asking operators,
12 each and every one, to put up all the money it would take if
13 there was a chance, no matter how small, that they would
14 suffer those catastrophic circumstances. The catastrophic
15 thing -- and, Mr. Laird, you make a really good point, which
16 is we have got to be sure, and the world has changed, the
17 world is different than it was five, six, eight months ago,
18 in terms of what does financial assurance look like. But,
19 again, I think some kind of a pooling approach can be very
20 helpful in that respect because you can make everybody put
21 their share of the risk up in a pool, and you have got it,
22 it ain't going to go away, presumably. And even under the
23 circumstances that we have been experiencing lately. So I
24 think you are on to the right set of issues here.

25 Chair Brown - Well, and I think -- to segway right

1 back into -- I think that is where we got the 10 questions,
2 and the 10 questions look at the holistic approach and, you
3 know, it is not a menu, it is not a one-size-fits-all, but
4 we have to figure out divestiture, I mean, divestiture is a
5 huge issue which we will get into as we get through the rest
6 of the slides. So maybe it is time to go through the
7 slides, answer or ask more questions about the pooled fund,
8 and all that.

9 Mr. Leary - Well, I thought, Madam Chair, we could
10 certainly do it that way. In the interest of time, were
11 there a particular set of questions -- if we put the
12 questions back up, was there a particular set of questions
13 you want to make sure we got to in the time we have today?
14 There is the first five, and the second five, they are the
15 first two slides on your hand-out. That is just an idea, or
16 we could go back to going through them, about the question
17 3.

18 Chair Brown - I think we should briefly go
19 through. I think Tim and Kent certainly in our questions
20 has gotten to a lot of the issues. I do not think we need
21 to delve down on every one of these slides, but they are
22 going to touch on --

23 Mr. Leary - Okay, we will pick up on the basin.

24 Chair Brown - Okay. But it has been helpful.

25 Mr. Leary - Before we do, Sheila, did you have

1 something you want to say?

2 Ms. Kuehl - The one, just one back that was
3 talking about corrective action, I do not recall that you
4 went through -- no, the next one. Oh, sorry. I saw a two
5 column one that the right column was called "Corrective
6 Action."

7 Mr. Orr - We are not quite there yet.

8 Chair Brown - Yeah, we are going to get to that,
9 with the difference between BPM (phonetic) and Corrective
10 Action.

11 Mr. Orr - Right. Okay, so real quick, one of the
12 things that we did look at in our process was whether or not
13 to impose a contingency on top of the calculated postclosure
14 maintenance costs. We looked at it. Basically, it is to
15 address the uncertainties relative to how much things may
16 change between now and when a landfill closes, or for
17 unexpected things. What we decided is that, through the
18 Phase I regulations, we upgraded the quality of the cost
19 estimates that were performed in the first place so that
20 there really is no distinction now between a preliminary
21 cost estimate and a final cost estimate, it has the same
22 level of rigor. And so, based on that, the Board directed
23 us not to include that currently in the Phase Two
24 regulations. Now, what is the difference between
25 postclosure maintenance and corrective action? That touches

1 on a little bit of the three different categories that Tim
2 Gage was just referring to. So far, the X values, the 30X
3 and 15X, does not include corrective action, it only
4 includes the routine type maintenance items where you are
5 mowing the lawn, you are maintaining the sprinkler system,
6 the re-grading, the monitoring, and so forth, and it also
7 includes replacement of periodic things to reflect routine
8 wear and tear. We spend a lot of time with stakeholders
9 going over the difference between postclosure maintenance
10 and corrective action. This slide attempts to capture that.
11 Along with that, we have this -- this is actually the
12 results of one of the exercises that we did at one of the
13 workshops to break down what is postclosure maintenance and
14 what is corrective action. The first test is, is it in the
15 postclosure maintenance plan? If it is, then it is
16 postclosure maintenance. If it is not, then it may be
17 something that should be in the plan, or it is corrective
18 action, and that may be a matter of degree. Like, for
19 example, if you have a fire and a header line on a gas line
20 is damaged, it may be a matter of a simple repair; if you
21 have a large wildfire that burns your entire collection
22 system, and it causes a violation of the gas standard, then
23 it becomes a corrective action. So, some of those things
24 are a matter of degree, things that we have closely
25 analyzed. But for the general purposes, the X values do not

1 include corrective action.

2 Mr. Sweetser - Larry Sweetser, on behalf of the
3 Rural Counties. There is a subset we spent a lot of time in
4 the work group meetings on, and that is things that may fall
5 under a corrective action, but would be addressed as a
6 standard operating cost. Why trigger release of funds, or
7 go through a whole process for corrective action if you are
8 just going to address it under maintenance? If something
9 happened, even a replacement item, if you have a drainage
10 ditch or something that had to be on there, that is usually
11 a corrective action to replace the whole thing. If you only
12 had to replace a portion, that is just maintenance. And we
13 never did get to a finite definition between those.

14 Mr. Orr - And for the record, that does not really
15 matter because we are not looking to reimburse -- pay
16 reimbursement costs for that, it is really for the purposes
17 of establishing the level of assurance. So you are not
18 sending us an invoice and saying, "Here, pay this for us out
19 of our corrective action account, our out of our postclosure
20 maintenance account." If it is something you are doing
21 under standard operating procedures, you just do it. And it
22 is not a corrective action, and it is not postclosure
23 maintenance, just what you are doing. So this is for the
24 purposes of establishing the level of financial assurance,
25 not as a means of being reimbursed from one of your pots of

1 money.

2 Now, one of the issues that came up last month was
3 the notion of major maintenance. We have provided three
4 options here for the Board's consideration on how major
5 maintenance could be addressed, and we used as the main item
6 that is within the Board's jurisdiction, would be the
7 replacement, the entire replacement of the final cover. The
8 Board could pursue that as adding it to the list of items
9 that should be in the Postclosure Maintenance Plan. The net
10 result of that would be, you would take the cost of
11 replacing the final cover, divide that by 30, and that would
12 need to be added to your annualized postclosure maintenance
13 cost. The second option that we have listed here is making
14 it as a second threshold or trigger for what the corrective
15 action assurance might be, and then the third thing would be
16 to address it through a pooled fund.

17 One of the other questions that came up was what
18 the value would be of doing some site-specific risk
19 assessments, and so we posed a few questions to help analyze
20 that question. Probably the most important one is what have
21 we already done to look at this issue. The Board has done a
22 lot of work, has spent a lot of money to analyze the risks
23 at landfills. But I think the second important question is,
24 how would the actual results be used? So if you do risk
25 assessments at two or three landfills, what does that tell

1 you beyond just the risks at two or three landfills.

2 Mr. Leary - Bill, let's pause. Jennifer?

3 Ms. Richard - Jennifer Richard from Senator --
4 Board Member Kuehl's office. The question was about the
5 major maintenance, and when you were talking through which
6 things are postclosure maintenance, and which things were
7 corrective action, and trying to determine that, were any of
8 those items things that might now be considered major
9 maintenance? And sort of, if we did not have a category of
10 major maintenance, where would those activities fall in the
11 postclosure maintenance corrective action spectrum?

12 Mr. Orr - Well, the three items that have been
13 mentioned by the environmental stakeholders as being major
14 maintenance items, the first would be the total replacement
15 of final cover, that is not explicitly addressed in the
16 regulations right now. Some landfill operators -- many
17 landfill operators put the maintenance of their final cover
18 in as a postclosure maintenance item, but not the complete
19 replacement of the final cover. The second item that is
20 mentioned quite a bit is replacement, complete replacement,
21 of the leachate collection system and/or the liner system,
22 and both of those items are not within the Board's
23 jurisdiction. So those would be things that would need to
24 be addressed by Water Board regulations. So those are the
25 main items that have been discussed, and only one of the

1 three is really within our purview.

2 Chair Brown - Would those issues that you
3 discussed that are under the purview of the Water Board be
4 included in their corrective action and what the landfills
5 set up for corrective action with the Water Board?

6 Mr. Orr - As I understand it, their water quality
7 corrective action is very narrowly construed and would most
8 likely not directly include the replacement of a liner or
9 the replacement of a leachate collection system.

10 Ms. Mulé - So would we have the authority --
11 Rosalie Mulé, Board Member -- would we have the authority to
12 request the financial assurances for those items, even
13 though we do not regulate them?

14 Mr. Orr - No. So in regard to my three options
15 that I have laid out there, under the first option, we would
16 have the authority to list it as a postclosure maintenance
17 item within our regs, the final cover; regarding the second
18 option, using that as establishing the threshold for
19 reasonably foreseeable corrective action, if that was set as
20 the threshold, it could be used for other types of major
21 maintenance activities, so under that middle option, it
22 could be used for replacing a leachate collection system, or
23 a liner, but the level would be set based on the final
24 cover, which is within our jurisdiction.

25 Ms. Mulé - Right.

1 Mr. Leary - Jennifer.

2 Ms. Richard - Related to that, how much larger is
3 the cost of replacing -- a total replacement of the final
4 cover, or the total replacement of the leachate collection
5 system relative to what is currently estimated as the most
6 reasonable foreseeable corrective action cost related to
7 water quality?

8 Mr. Orr - I have that here somewhere. Well, let
9 me just say this about that. I do not have the figures for
10 the leachate collection system, or the liner, we do not
11 normally get cost information for things. But what we have
12 done is, we used as a surrogate for the replacement of the
13 final cover, the closure cost. It is going to be more
14 expensive to replace a final cover, most often, than it
15 would be to put it there in the first place because you have
16 to take the old one off and put the new one on. So we used
17 the cost estimates for closure as a surrogate for what that
18 might look like. We went through -- I am going to turn to
19 the page that I have got that -- we went through and there
20 are currently on the order of 132 or 133 landfills that have
21 their water quality reasonably foreseeable corrective action
22 amounts in place, and in only nine instances would the water
23 quality costs be more expensive than the final cover costs.
24 In all other instances, the final cover replacement would be
25 more expensive than the water quality corrective action, and

1 the difference would be on the order of \$977 million
2 statewide, \$671 million if you count Eagle Mountain, because
3 Eagle Mountain is a landfill that has not accepted any
4 waste, but in that one instance has a very expensive
5 corrective action amount that would really move that. So in
6 most instances, it would be more expensive to replace the
7 final cover than the water quality estimate that is
8 currently on file.

9 Mr. Leary - Margo.

10 Chair Brown - I was going to say can we try and
11 get through the next few slides.

12 Mr. Orr - Okay. So in terms of the work that we
13 have already done, we did a landfill compliance study, it is
14 also known as the Geosyntec Report. As part of that, there
15 was a detailed analysis of 25 landfills. That same
16 information was also utilized by our contractor in helping
17 prepare a risk assessment screen methodology, that is
18 actually included as part of the Draft Legislative Report,
19 that is Attachment 1 to Agenda Item 7. There are 13
20 criteria that were developed by the contractor to use as a
21 screening tool for assessing risk. The financial modeling
22 tool that we have talked a lot about also utilizes
23 information from previous studies on small, medium, and
24 large size corrective actions. And, finally, the Board did
25 its own corrective action survey; the bright bar on the

1 right-hand side compares what we ended up with to the work
2 that was done by the contractor in validating the modeled
3 values. What we found was the vast majority of the
4 corrective actions over the last 15 years are either related
5 to groundwater or landfill gas migration.

6 We also looked at a number of options in terms of
7 what to include in a reasonably foreseeable corrective
8 action, whether to have a stand alone plan that deals with
9 non-water quality corrective actions, whether to have a
10 combined plan with the Water Board, or as currently
11 proposed, that we utilize the Water Board's estimate as the
12 value that drives the level of assurance. We have done an
13 analysis for the purposes of what would it look like, what
14 would the impact be? I mentioned that having the
15 replacement of the final cover would be more expensive than
16 water quality, but using the same time frame that we use for
17 the rest of our analysis. Those costs would not actually be
18 incurred until the landfill was closed, and then there is a
19 final cover, and at some point after that. So during the
20 100-year time frame that we have talked about, we estimated
21 that that would represent about a \$700 million exposure.
22 And based on that, the defaults using the same categories
23 that we used for everything else, would be on the order of
24 \$95 million.

25 We also looked at extraordinary corrective action

1 for the purposes of discussion, that there would be
2 something above and beyond at some facilities throughout
3 that 100-year period, and could go back to that if need be.

4 This gets into the assumptions that we have looked
5 at for the analysis using the modeling tool that was
6 provided by the contractor. In the interest of time, I
7 think I will just go through these and not really talk about
8 them. The assumptions are there in detail, in Attachment 1
9 of Agenda Item 7, the Draft Legislative Report. We
10 excerpted that from the ICF Contractors Study. Probably the
11 thing I would want to drill into the most is, as we look at
12 the changes that we made -- let's look at this. What this
13 shows is how we refined the modeling tool that was provided
14 by the contractor. And essentially what we looked at is, at
15 different levels of financial assurance, how will the risk
16 vary to the state in terms of exposure? And when the
17 contractor originally developed the model, it was with the
18 intention of sizing a pooled fund, it was not specifically
19 developed for analyzing different levels of financial
20 assurance. So the way that the contractor developed it is
21 that they assumed that you are going to have a financial
22 assurance mechanism in place for 30 years, and then have
23 something else after that. We changed that. So we looked
24 at what we called "delays" and I think I will just skip over
25 that, if you want more information we can come back to it,

1 but as a way of normalizing how different levels of
2 assurance were compared.

3 This is the other slide; we have already sort of
4 touched on that. These are the Contractor Standard Rates.

5 Chair Brown - I do not think that these were major
6 questions that came up, so I think we are kind of good.
7 Pooled fund --

8 Mr. Orr - We have not really talked about the
9 pooled fund options very much. Do we want to go through
10 those at this point in time?

11 Mr. Leary - Madam Chair --

12 Chair Brown - Yeah, we did last time. I think we
13 were looking for some basis for what we should be supportive
14 of in a pooled fund.

15 Mr. Leary - I think Glenn wanted to offer
16 something earlier.

17 Mr. Acosta - Yeah, just one quick point. If you
18 could go to the previous slide? The one with the
19 assumptions and default rates. And Glenn Acosta with L.A.
20 County Sanitary for the record. I think it is important to
21 mention that when you look at the size of exposure to the
22 state, it is based on what the assumptions are that you use
23 this financial model. So while one percent per year may not
24 seem like a big number, I always ask the question, is it
25 really --in the final analysis, is it really close to

1 reality? So, to me, what that means is, if you have 100
2 landfills, every year one of those is at least going to be
3 in default, right? One percent. So you have 282 landfills,
4 so you are almost guaranteed that every year someone is
5 going to be in default. Now, on top of that, you have the
6 fact that these defaults are longer than one year, so in
7 many years, under this study, you have multiple operators in
8 default. So is that really the case in reality? Do you
9 have right now multiple operators in default? So I think
10 when you start evaluating the true risks out there, you need
11 to compare that to reality so that you calibrate what is
12 going on. Thank you.

13 Chair Brown - I think the remainder of the slides,
14 we can probably leave. I think that where we are at this
15 point, what has been of value, I think, is the discussion
16 that we have had, and the interaction, and the opportunity
17 to share our opinions and ideas and ask questions. Lots of
18 these slides were on performance and the pooled fund, which
19 welcome our stakeholders to give us your input and opinion
20 without having to go through all the slides and scenarios,
21 because we have them. And maybe in the interest of time and
22 efficiency, just continue the dialogue for the next 15 or so
23 minutes, and I know some of you are traveling and it has
24 been along day. So I think the value of -- and going
25 through the slides that we all have in front of us. So with

1 that, maybe, Mark, you can facilitate any -- or added pooled
2 fund discussion, performance-based, or anything that we have
3 not covered that you think is important before Tuesday.

4 Mr. Leary - Jennifer.

5 Ms. Richard - I have a question. If we used a
6 pooled fund to address risks, you know, the catastrophic
7 accident that takes place, or the total cap replacement,
8 which we anticipate something like that may happen to some
9 landfills, but probably not all landfills, and therefore it
10 makes sense to have a pooled risk fund, do we have a way to
11 make sure that we only cover those costs that go beyond what
12 corrective action -- I mean, that it appropriately funds the
13 risks that are beyond corrective action and maintenance
14 costs, if that makes any sense, that it does not -- because
15 we keep having these questions about the boundaries between
16 corrective action and what is routine maintenance, and then
17 there are these extraordinary corrective actions, etc., and
18 it seems like if we set up this other instrument to deal
19 with these additional costs, that that boundary of what
20 falls into that instrument is going to be important.

21 Mr. Orr - Yeah, I think it would be really
22 important in writing and enabling language for such a fund
23 to make it clear that it was a backstop and could only be
24 used when the other mechanisms have either been depleted, or
25 are no longer viable.

1 Mr. Leary - Grace.

2 Ms. Chan - Grace Chan, L.A. County Sanitation
3 Districts. I would just like to say I really appreciate the
4 format that we have had today. I have not been involved in
5 the day to day discussions, but I certainly appreciate the
6 challenge that both the staff and the Board had in following
7 through with the directive of AB 2296, and I appreciate the
8 hours and hours that the staff spent with our staff and with
9 others, and with you all. Unfortunately, I think it really
10 does come down to a question that Mr. Laird asked, which is
11 what is the risk to the state? And that is what we have all
12 been struggling with, I think. And at least for the
13 Sanitation Districts, I just do not think we are on the same
14 page as the staff. I am not sure we are all giving the
15 state credit for the existing regulatory programs; they are
16 among the strictest in the country. You guys do a great job
17 and through the LAA system to be involved in the operation
18 of our sites. We are required to build our landfills so
19 that they do not fall down in a strong earthquake. And we
20 build our drainage systems for the 100-year storm. I mean,
21 I have just never been comfortable that all of that has been
22 rolled into it, but with that said, I just did want to say I
23 appreciated the format today.

24 Mr. Leary - Chuck.

25 Mr. Helget - Chuck Helget, Consultant to the

**California Reporting, LLC
52 Longwood Drive
San Rafael, California 94901 (415) 457-4417**

1 Sanitation Districts. A couple of points. One of the
2 corrective action cost estimates, staff has taken sort of a
3 snapshot in time, which is the past 15 years, to validate
4 the assumptions of costs and frequency for corrective
5 actions, and then projected that over a period of 100 years.
6 And, in essence, in doing that what it effective assumes,
7 this past 15 years has been a time when the regulatory
8 programs have changed in a rather dramatic fashion, in two
9 particular key areas, 1) we have gone from unlined landfills
10 to lined landfills, we have gone to much more extensive gas
11 monitoring and control systems during this time period; and
12 when you take the experience of the last 15 years and
13 project it over a full 100 years, in essence, what you are
14 assuming is that the cost of that investment in better
15 environmental control systems was essentially wasted. It
16 had no impact on performance. And that is one of the
17 reasons that we believe that the staff's estimates of the
18 risks to the state are somewhat overstated. The other
19 comment I would like to offer is to kind of the
20 extraordinary risk issue. The assumptions there were that
21 you would have one failure event every -- I guess one
22 failure event every 20 years from such things as earthquake,
23 fires, and floods, and that the cost of that event would be
24 on the magnitude of \$100 million. Well, if you look back
25 over the last 20 years, we have had three major earthquakes,

1 we have had numerous fires, we have had numerous floods, and
2 I would submit to you that there has not been a single
3 incident resulting from a single failure of a landfill from
4 any of those events, that anywhere near approach that \$100
5 million. Santa Cruz's landfill in the earthquake -- I
6 imagine there was some minor damage, but it certainly did
7 not cost you folks \$100 million to address whatever that
8 damage was. Again, we think that, for those types of
9 reasons, this risk, you know, the risk to the state has
10 really been over-estimated, if you will.

11 Mr. Leary - Jennifer.

12 Ms. Richard - I have another question that was
13 related. I mean, it seems like there is a fourth category
14 of risk, and that is when a landfill operator ceases to
15 exist and there is nobody to hold liable for the maintenance
16 costs, and when the state has to go in and start to maintain
17 that facility. And I guess I have questions about sort of
18 mechanisms for dealing with that. We talk about our -- in
19 all the scenarios, nobody is talking about a perpetual fund,
20 of having the 47X. What we have is a 30X, which I think it
21 is up to how many years into the future?

22 Mr. Orr - The 48?

23 Ms. Richard - Forty-eight years into the future.
24 But what happens after 48 years? And what are the
25 mechanisms for dealing with when the state gets left holding

1 the bag? And is that something that we have talked about
2 much? I know it has been talked about whether that goes
3 into the pooled fund that is proposed, but then there is a
4 question about moral hazard there that gets raised.

5 Mr. Orr - Well, we have looked at the 49X as being
6 a level that would be perpetual care. I think the concern
7 that staff has voiced through the analysis is that that
8 would, in our view, prompt immediate early defaults by
9 closed landfills. And so, instead of making things better,
10 you are actually making things worse. And so, you know, if
11 you wanted to apply something going forward, that would be
12 one thing, but applying it to the landfills when half of
13 them have already stopped accepting waste, that is why we
14 have sort of settled in on the 30X.

15 Ms. Richard - I guess my question is and what
16 happens to that risk, though?

17 Mr. Orr - Well, I think that is that residual risk
18 that, at that point, that inevitable residual risk could
19 only be addressed through a pooled fund or some other source
20 of revenue.

21 Ms. Richard - If you look at an insurance model,
22 it makes sense because you share the risk across a wide pool
23 of individuals, and you all pay a little bit more to ensure
24 against something -- making sure if it happens to you. But
25 the default of another person's company, that is kind of a

1 different creature than a major earthquake, or flood, or cap
2 failure. I mean, it seems like it may not be as appropriate
3 as in that type of a fund, I guess, is -- but maybe I am
4 wrong, I do not know.

5 Mr. Orr - Well, we have attempted to model some
6 categories, general defaults where everybody would have a
7 similar chance of defaulting. We have also identified some
8 subcategories, the rural publics and the single privates
9 where we think there is a special risk that is there. All I
10 would say, in some respects by pooling the risk, you may be
11 able to lower the assurance level that everyone has to
12 provide to cover the risks that some may be more likely to
13 incur.

14 Mr. Leary - Go ahead, Larry.

15 MR. Sweetser - I guess just adding some of my
16 closing thoughts, too, is we do appreciate the format here.
17 The order of magnitude of the issues we are dealing with is
18 probably higher than anything else the Board or anybody has
19 ever tackled. And so I, for one, do not mind taking as much
20 time as we need to, to come up with a better livable answer;
21 we are never going to get all the answers we need. As long
22 as the slide is up there, I will put in my little speech
23 again on the pooled fund. Again, from our perspective, the
24 Rural Counties, that we have not supported, and we have not
25 opposed it, we just would really like to see some time spent

1 with the group on getting into some of the details of how
2 such a thing would work. There are a lot of questions out
3 there, and I can understand the need and some of the
4 concerns of having one, we would just like to have a better
5 example of how it works. The model that has been developed,
6 I do not know, it must have been three, almost four years
7 ago when we first got exposed to this model of ICF. There
8 have been questions raised since the very beginning on some
9 of the assumptions. So I, for one, do not mind a fresh look
10 at that because many of us, after all these years, still do
11 not understand how we got the assumptions that we do have,
12 and how they play out in the real world. So we would
13 support having as much time as we need to, to look into some
14 of these issues before we make a decision.

15 Mr. Stoddard - Just very briefly, I think Sheila
16 said at one point the industry does not want to be mandated
17 to do something. And I would say we are perfectly prepared,
18 we know a mandate is coming. And this is an area that needs
19 attention. We supported 2296 even though we had some
20 reservations about the magnitude of the problem that was
21 represented. I guess what we would say this is all about
22 right sizing the hammer, and what we would like to do, and
23 we think the make-up of the Board offers a real opportunity.
24 We think there are some legislative issues here, I mean,
25 this whole thing got kicked to the Board, but part of that

1 was recommendations back to the Legislature. We would love
2 to see the Board move on that quickly so that we can do some
3 things in this legislative session because I think there are
4 some statutory issues that we really -- we need help on, and
5 that they will help solve what otherwise could be a pretty
6 darn complicated and expensive regulatory approach, if that
7 is all we have to work with. So we would love to work with
8 the members of the Board on a legislative strategy to try to
9 advance the ball in this session.

10 Chair Brown - Any other before wrapping it up?

11 Mr. Laird - [inaudible]

12 Mr. Leary - Well, Madam Chair, let me ask to you
13 and the two other members that remain, what do you think the
14 best use of our time next week might be? We have two fairly
15 broadly worded titles having to do with financial assurance.
16 It occurs to me that one option might be, in regards to the
17 first item, would be to package up some scenarios, some
18 construction of regulatory mechanisms that will have a
19 spectrum of alternatives that the Board could react to, and
20 stakeholders could react to, and the second item a package
21 of potential legislative solutions that the stakeholders and
22 the Board could react to. There might be enough there, too,
23 that would constitute regulatory direction, or legislative
24 direction, that we could then move forward with, or there
25 might not be, and maybe require another month of work.

1 Chair Brown - Well, isn't Item 7 the Report to the
2 Legislature anyway?

3 Mr. Leary - Yes.

4 Chair Brown - So I was going to mention to
5 everybody that that was just posted last night, so we will
6 spend some time with that. I know I have not spent much
7 time with it in advance of today, so we probably need to
8 look at that. And it needs to add some of this --

9 Mr. Leary - It does not set the table for, I
10 think, the suggestion Kent was making. It does portray the
11 history and all the work that the Board has done heretofore
12 --

13 Chair Brown - Right.

14 Mr. Leary - But it does not -- it offers the
15 opportunity for us to throw some ideas into that report that
16 ultimately we transmitted to the Legislature, that seeks a
17 legislative solution.

18 Chair Brown - Yeah, exactly. You utilize it as a
19 vehicle --

20 Mr. Leary - Absolutely.

21 Chair Brown - -- to seek or suggest some statutory
22 changes in order to address some of these issues, look at in
23 Item 6 what, you know, there may be common consensus on some
24 options there. And if we cannot get there, then, you know,
25 we go out and look for more robust information.

1 Mr. Leary - I think we would be happy to try to
2 provide that.

3 Mr. Laird - Just a couple of comments on your
4 question. One is, with regard to seeking anything
5 statutory, my only concern or caution would be that we be
6 careful not to sort of preclude some action or point to some
7 action we are not sure we are taking yet. That would be my
8 only concern, and yet understand what Kent's sort of
9 admonition was, is we are getting to the point that, you
10 know, even with a gut and amend, there is a point at which
11 that becomes untenable, and you really have got to head that
12 way before they get to their summer break, to not appear to
13 be pulling a fast one and to be able to vet it with the
14 various parties. The second thing is in your request for
15 direction and next week, and I want to add a major task, but
16 if there is some way to relatively succinctly distill the
17 issues that have been talked about broadly here before you
18 get to the scenarios, so that anybody that did not sit
19 through this discussion could benefit from the different
20 polls of opinion that sort of hover over all these choices,
21 that would be a very helpful thing to do. And yet, if it is
22 one of those tasks that it is give a history of the world
23 annotated with footnotes by tomorrow at 8:00, do not do it.
24 But, you know, I think that would be helpful for the
25 context, for the scenarios, for anybody that is going to

1 read it that has not been in this room today.

2 Ms. Mulé - Mark, if I may?

3 Mr. Leary - Yes, Rosalie.

4 Ms. Mulé - Rosalie Mulé, Board member. I think
5 for Item 6, that would be fairly easy to do because I have
6 been making my notes on key issues for the Phase Two
7 regulation, so I think that is something that you could pull
8 together fairly quickly, I am happy to share my notes with
9 you, I will do that. And then, on Item 7, which is our
10 report to the Legislature, I always viewed that as the
11 vehicle to get some of these ideas and thoughts out there
12 before then, not to say that we need to do this immediately,
13 but in my experience with this issue over the last five
14 years, I do recognize that there are some statutory
15 deficiencies that I think we need to address. And before I
16 close, I do want to thank everyone for being here today. I
17 think this discussion has been very very helpful. And has
18 even helped me, again, just try to compartmentalize and
19 distill some of the issues and really get some clarity on
20 all of this. So thank you.

21 Mr. Leary - I think we will try to come back and
22 do exactly as you suggest, Member Laird, and reinforced by
23 Margo and Rosalie. I think what we can do, as Rosalie
24 suggests, is do a fairly simplistic distilment --
25 distillation, there you go, of the issues and offer

1 scenarios in response to those issues.

2 Chair Brown - Well, and for the stakeholders that
3 are here, I will echo Rosalie, thank you very much. I think
4 it makes for a robust public access process when we have
5 participation. Do you think we will have something to look
6 at, just so that we are not hunting through bods (phonetic)
7 on Thursday, Friday night, looking? I just do not know as
8 far as timing is concerned or we cannot just throw it on the
9 table Tuesday morning.

10 Mr. Leary - No, absolutely not.

11 Chair Brown - Either probably not before Friday,
12 but maybe Friday before close of business.

13 Mr. Cupps - Check your e-mail Friday night at
14 6:00.

15 Chair Brown - Well, it depends on what time you
16 close business. You might be distilling by then.

17 Mr. Laird - Yeah, that is when the press releases
18 come out that are not supposed to really be read. Can I make
19 one other comment? You know, I just have to note that it is
20 really odd that there is not a person from a traditional
21 environmental advocacy organization, and that unnerves me
22 slightly just because I do not want to head into this with
23 suddenly people rushing with concerns that were not made
24 when we had a lengthy, thoughtful discussion about this.
25 So, you know, I will make a point of reaching out, but I

1 just hope that is not indicative of something we are not
2 reading right here.

3 Mr. Leary - Well, just a couple thoughts, one, I
4 thought any time you put financial assurance in a title, we
5 engender all kinds of participation; actually, the turnout
6 today kind of surprised me in the limited number of folks we
7 have got, but we do -- much of the thinking offered today is
8 a reflection of input from that constituency group, all the
9 major maintenance discussion as a result of the -- input of
10 that catastrophic maintenance -- is the direct reflection of
11 that kind of input. You are not on, Chuck.

12 Mr. Helget - It is probably -- not jumping to the
13 defense of the environmental community, but --

14 Mr. [Unidentified Speaker] - Oh, I hope everybody
15 is still listening. I am sure they really appreciate your
16 efforts, too.

17 Mr. Helget - Yeah, I know that -- Scott Smithline
18 (phonetic) usually covers this type of stuff and Scott has
19 had a recent bad bout of burglaries at his place, and I
20 think that probably has something to do with the fact that
21 he is not here.

22 Mr. Leary - But back to the wrapping up for the
23 Item 6, I think we can meet a mid-day Friday deadline and
24 what we are envisioning is a Word document that becomes an
25 attachment to that, that just provides a distillation and a

1 scenario construction as a result of that distillation of
2 issues, that everyone will have a chance to react to, and we
3 will make Noon Friday that deadline. We have a distribution
4 list for this issue, don't we?

5 Mr. Orr - Yeah.

6 Mr. Leary - Then we will circulate it, too. In
7 addition to posting it, we will circulate it.

8 Chair Brown - Years of workshops. Thank you all.
9 I guess that adjourns this meeting.

10 [Adjourned.]

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

2

CERTIFICATE OF REPORTER

I, Phillip Gioe, a certified Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing Strategic Policy Development Committee Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of May, 2009.

Nancy Palmer
CERT**00121